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INDIAN CRIMINAL LAW.

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P639

CALCUTTA:
PRINTED BY THACKER, SPINK AND CO.

SECOND EDITION.

[illegible] Edition of this Manual was published in 1883, [illegible]d out within a year. Before going on furlough [illegible] 1884, I completed the manuscript for a Second [illegible] for various reasons it was not published.

[illegible]ary 1886 I returned to India, and it was then [illegible]o bring the book up to date. Heavy work in [illegible]riat has prevented my doing so as quickly as [illegible]ave done had I remained in a Mofussil District. [illegible] explain why the Manual has been so long out [illegible]

[illegible]udicial officers are of opinion that case-law is [illegible] perfluity in this country, and that more justice [illegible]one, were the Law Reports burnt, and their [illegible] stopped for the future. No doubt, where the [illegible]ffed in plain and clear language, there is less [illegible] for case-law. The fact, however, that Law [illegible] exist must be accepted, and a very thorough [illegible] of those reports is necessary for the Magistrate [illegible]udge, if they not only wish to give just and [illegible]cisions, but are also desirous of seeing those [illegible] held on appeal or revision. Such a knowledge [illegible]y also for the purpose of ascertaining the weight [illegible]w on a certain point, and to prevent the triumph [illegible]d or inapplicable rulings. If a ruling is quoted [illegible]t of any particular contention, and such ruling [illegible] accord with the law—and, after all, the law is [illegible] in the codes—the court should not only know [illegible]but should be in a position to demonstrate, the [illegible]ess of the ruling. It has been said of a still [illegible]ook than either the Weekly Reporter or the [illegible]aw Reports—

"Ic Liber est, in quo quærit sua dogmata quisque,
Invenit et pariter dogmata quisque sua."

Throughout the Mofussil the [illegible] studied, put forward, relied on, [illegible] the Code of Criminal Procedure [illegible] The former, as compared with the [illegible] of Pleaders, somewhat obsolete [illegible] Even Diabolus can, for his own [illegible] referred to in the above district [illegible] Mofussil can always bring some [illegible] of an allegation that black is white [illegible] But it is the object and duty of the [illegible] worse reason from appearing to [illegible] vanquish Diabolus on his own g[illegible] armoury of weapons. This they can [illegible] have a thorough knowledge of case-law, as well [illegible] codes.

Where case-law varies, over-rides, or annexes [illegible] the written code, the commentator should point [illegible] divergence, and endeavour to enforce respect [illegible] adherence to the intention of the Legislature. [illegible] are numerous and contradictory rulings, it is the [illegible] function of a commentator to sift the chaff from [illegible] and to extract the nuggets of ripe judgment and [illegible] sense from amidst

> A myriad mass of instances
> The labyrinth of precedent!

He should endeavour to deduce some principle [illegible] *decidendi* from long series of decided cases. If [illegible] be adduced, then presumably the case-law is defe[illegible] he should not hesitate to point out in what res[illegible] defective, unsound, or erroneous. He must pr[illegible] so to speak, the overgrowth of case-law and [illegible] serve the intention of the Legislature from being [illegible] by its rank luxuriance. This has been found [illegible] in the case of the Penal Code of France. [illegible] the peculiar province of the Indian commentator [illegible] that the Indian codes have no connexion with [illegible] law, but are a distinct entity, to illustrate and [illegible] one part by another, to construe their provisions [illegible] to the fair import of their terms, taken in [illegible] sense, in connexion with the context, with a view [illegible] their objects, to promote justice, and above all [illegible]

[illegible] preserve the intention of the Legislature. If a commentator has the requisite strength of mind, knowledge, and ability to do this, his commentary will be a power in [illegible], and will exercise a salutary and far-reaching influence on the courts, the administration of justice, and, ultimately, even on the Legislature. This, no doubt, is an ambitious goal to aim at, and though I may not have reached it, yet a start in the right direction is, in the words of Virgil, the accomplishment of half the enterprise.

"Dimidium facti, qui cepit, habet."

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[1] See Act XI, 1874, s. 5.
[2] and [4] See Act XI, 1874, s. 6.
[3] Ditto Ditto, s. 7.
[5] See Act XI, 1874, s. 8.
[6] See Act XI, 1874, s. 9.
[7] Repealed by Act XI, 1874, s. 10.
[8] See Act XI, 1874, s. 11.
[9] and [10] See Act XI, 1874, s. 12.

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[1] See Act XI, 1874, s 13.
[2] Ditto ditto, s. 14.
[3] See Act XI, 1874, s. 15.
[4] Ditto ditto, s. 16.

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[1] See Act XI. 1874, s. 17.
[2] Ditto ditto s. 18.
[3] Ditto ditto s. 19.
[4] Ditto ditto s. 20.
[5], [6] and [7] See Act XI, 1874, s. 21.
[8], [9], [10], [11] and [12] See Act XI, 1874, s. 22.
[13] Ditto ditto, s. 23.
[14] and [15] Ditto ditto, s. 24.

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[1] See Act XI, 1874, s. 25.
[2] Ditto ditto, s. 26.
[3] Ditto ditto, s. 27.
[4] Ditto ditto, s. 28.
[5] and [6] See Act XI, 1874, s. 29.
[7] See Act XI, 1874, s. 30.
[8] Ditto ditto s. 31.
[9] Ditto ditto s. 32.
[10] Ditto ditto s. 33, para. 1.
[11] Ditto ditto s. 33, para. 2.
[12] [13] and [14] See Act XI, 1874, s. 34.

BENGAL SECRETARIAT LIBRARY

THE

INDIAN PENAL CODE;

BEING

ACT No. XLV OF 1860.

AS AMENDED BY ACTS XIV AND XXVII OF 1870, VIII OF 1882, AND X OF 1886.

Passed by the Legislative Council of India.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 6TH OCTOBER, 1860.)

CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Title and extent of ration of the Code.

1. This Act shall be called THE INDIAN PENAL CODE and shall take effect on and from the first day of May, 1861, throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Punishment of offences committed within the said territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of May, 1861.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories, in the same manner as if such act had been committed within the said territories.

See Extradition Act, XXI of 1879, s. 11, and the Schedule.

Punishment of offences committed by a servant of the Queen within a foreign allied State.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said first day of May, 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty; or of any special or local law.

As amended by Act XIV of 1870.

Section 101 of the Mutiny Act does not deprive the Civil (as opposed to Military) Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Com-

mander-in-Chief. The section is merely permissive of a military trial being held.—I. L. R., 5 Calc., 124.

See Reg. XX, 1825, s. 2. Schedule I of the new Criminal Procedure Code repeals Act XV of 1874 (Laws Local extent) *so far as it relates to Bengal Regulation XX of 1825.*

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled 'General Exceptions,' though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a.*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b.*) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Expression once explained is used in the same sense throughout the Code.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

'Gender.'

8. The pronoun 'he' and its derivatives are used of any person, whether male or female.

'Number.'

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

'Man.'

10. The word 'man' denotes a male human being of any age.

'Woman.'

The word 'woman' denotes a female human being of any age.

'Person.'

11. The word 'person' includes any Company or Association or body of persons, whether incorporated or not.

'Public.'

12. The word 'public' includes any class of the public or any community.

'Queen.'

13. The word 'Queen' denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

'Servant of the Queen.'

14. The words 'servant of the Queen' denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

'British India.'

15. The words 'British India' denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

'Government of India.'

16. The words 'Government of India' denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

'Government.'

17. The word 'Government' denotes the person or persons authorized by law to administer executive Government in any part of British India.

See s. 2 (10), Act I, 1868, General Clauses Act.

'Presidency.'

18. The word 'Presidency' denotes the territories subject to the Government of a Presidency.

'Judge.'

19. The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*.) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b*.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*.) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d*.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

'Court of Justice.'

20. The words 'Court of Justice' denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII, 1816, of the Madras Code having power to try and determine suits, is a Court of Justice.

'Public servant.'

21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely—

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India, or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to

execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a pan chayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

'Public servant' includes convict-warders (7 W. R., Cr., 99) and supernumerary peons under Act V, 1863, B. C., s. 6 (16 W. R., Cr., 27). A Court of Wards peon is not a Government servant (I. L. R., 7 Mad., 17); nor is a cartman employed temporarily by the Public Works Department on a monthly salary (I. L. R., 7 Mad., 18).

A potdar of the Bank of Bengal is not a public servant. See note under s. 161, *infra*.

A person appointed by the Government Solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as Prosecutor in the Calcutta Police Courts, is a public servant within the meaning of s. 21 of the Indian Penal Code.—I. L. R., 3 Calc., 497.

A Municipal Corporation is not a public servant within the meaning of s. 39, Act IV of 1877 (see definition of 'person,' s. 11, *supra*), and may, therefore, be prosecuted under the Penal Code without the preliminary sanction of Government required by that section.—I. L. R., 3 Calc., 758.

It is doubtful whether a Municipal Corporation is a public servant.—*per* White, J., in 2 C. L. R., 520.

'Moveable property.'

22. The words 'moveable property' are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

'Wrongful gain.'

23. 'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled.

'Wrongful loss.'

'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.

'Wrongful gain' includes wrongful retention of property.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully.

'Wrongful loss' includes the being wrongfully kept out of property.

A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly.'

'Dishonestly.'

Where a man owed money to another, and died without satisfying the debt, and the creditor, without going to the Civil Court, unlawfully seized some bullocks belonging to his widow, it was held, that he had done it dishonestly.—5 W R., Cr., 68.

But where a servant found some men fishing in his master's water, and seized their nets, it was held that he had not acted dishonestly.—6 W. R., Cr., 79.

Where Mochees take hides of carcasses of cattle thrown out on village 'bhagars,' and assert a right based on long usage, they do not act dishonestly.

25. A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise.

'Fraudulently.'

See notes under ss. 463, 464, *infra*.

26. A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing, but not otherwise.

'Reason to believe.'

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Property in possession of wife, clerk or servant.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

See notes under s. 378, *infra*.

28. A person is said to 'counterfeit,' who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

'Counterfeit.'

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

29. The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

'Document.'

Explanation 1.—It is immaterial by what means, or upon what substance, the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A check upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is, that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder,' or words to that effect, had been written over the signature.

'Valuable security.'

30. The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a 'valuable security.'

A statement of account, in which a balance is admitted to be due, is a valuable security.—2 Mad. H. C. Rep., 247.

Where the prisoner tore up such an account, which was in his handwriting, *held*, that he was properly convicted under s. 477 of the Penal Code.

'A will.'

31. The words 'a will' denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

'Act.'

33. The word 'act' denotes as well a series of acts as a single act.

'Omission.'

The word 'omission' denotes as well a series of omissions as a single omission.

Liability for act done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

As amended by Act XXVII of 1870.

See s. 149, *infra*.

In a late case the High Court said: "If death were the result of the combined effect of the wound on the arm and the injuries to the intestines, and the jury believed that Jhubboo inflicted the wound on the arm and some other person unknown caused the internal injuries, Jhubboo might be liable for murder by reason of the provisions of s. 34 of the Penal Code; but it may be a question whether in this case Jhubboo, being thus constructively guilty of murder, could be said to have committed the offence of murder within the meaning of s. 149, Penal Code, so as to make the other prisoners by a double construction guilty of murder."—I. L. R., 8 Calc., 739.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a.*) A and B agree to murder Z by severally, and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b.*) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c.*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food: in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

'Voluntarily.'

39. A person is said to cause an effect 'voluntarily,' when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person.

Here A may not have intended to cause death, and may even be sorry that death has been caused by his act, yet, if he knew that he was likely to cause death, he has caused death voluntarily.

'Offence.'

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word 'offence' denotes a thing made punishable by this Code.

As amended by Act XXVIII of 1870.

In Chapter IV and in the following sections, namely, sections, 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

As amended by Acts VIII of 1882 and X of 1886.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

'Special law.'

41. A 'special law' is a law applicable to a particular subject.

'Local law.'

42. A 'local law' is a law applicable only to a particular part of British India.

'Illegal.'

43. The word 'illegal' is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action:

'Legally bound to do.'

And a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

The word 'illegal' appears to be narrower than 'unlawful.' The word 'unlawful' is used in s. 23, and compare the use of the word in s. 551, Criminal Procedure Code, "detention of a female child for any unlawful purpose," 'Means,' in themselves lawful, may be 'unlawful' because of their tendency to injure others.—6 W. R., Cr., '59.

'Injury.'

44. The word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

'Life.'

45. The word 'life' denotes the life of a human being, unless the contrary appears from the context.

'Death.'

46. The word 'death' denotes the death of a human being, unless the contrary appears from the context.

'Animal.'

47. The word 'animal' denotes any living creature other than a human being.

'Vessel.'

48. The word 'vessel' denotes any thing made for the conveyance by water of human beings, or of property.

'Year,' 'Month.'

49. Wherever the word 'year' or the word 'month' is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

'Section.'

50. The word 'section' denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

'Oath.'

51. The word 'oath' includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

'Good faith.'

52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

Punishment.

53. The punishments to which offenders are liable under the provisions of this Code are—

First,—Death;

Secondly,—Transportation;
Thirdly,—Penal servitude;
Fourthly,—Imprisonment, which is of two descriptions, namely:
(1) Rigorous, that is, with hard labour.
(2) Simple.
Fifthly,—Forfeiture of property;
Sixthly,—Fine.

See the Whipping Act, VI of 1864. In India, police supervision is not an authorized punishment as in other countries.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

See s. 402, Criminal Procedure Code. There are not many instances in the Codes of similar tautology.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV of 1855.

Proviso as to sentence for term exceeding ten years, but not for life.

Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for

such term exceeding six years as to the Court seems fit, but not for life.

As amended by Act XXVII of 1870, s. 3.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transportation.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

See s. 368, Criminal Procedure Code.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

A was convicted of an attempt to rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under s. 59 of the Penal Code, to transportation for the same term. *Held*, that, under ss. 376 and 511, Penal Code, the sentence to imprisonment could not exceed five years, and therefore such sentence could not be commuted, under s. 59, to transportation for a longer term than five years.—1 B. L. R., Ap. Cr., 5.

When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—I. L R., 1 All., 43.

Officers exercising powers under s. 30, Criminal Procedure Code, can award transportation under this section.—9 W. R., Cr., 6.

The period of transportation cannot exceed the maximum imprisonment for the offence.—5 W. R., Cr., 16.

Section 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.—I. L. R., 5 Mad., 28.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A The estate becomes the property of Government.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

Forfeiture is a compulsory sentence under ss. 121, 122, *infra*.

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment in default of payment of fine.

64 In every case *of an offence punishable with imprisonment as well as fine*, in which the offender is sentenced to a fine, *whether with or without imprisonment,*

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

As amended by Acts VIII of 1882 and X of 1886.

See Act I, 1868 s 5, and Act V, 1867 (B. C), s. 4. Imprisonment may be awarded in default of payment of fine imposed under any local or special law.

When an offender is sentenced to transportation, the additional imprisonment in default of fine cannot be awarded.—7 W. R., Cr., 31.

Limit of term of imprisonment for default in payment of fine, when the offence is punishable with imprisonment as well as fine.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

See s. 33, Criminal Procedure Code.

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Term of imprisonment for default in payment of fine, when the offence is punishable with fine only.

67. If the offence be punishable with fine only, *the imprisonment which the Court imposes in default of payment of the fine shall be simple, and* the term for which the Court directs the offender to be imprisoned, in default of pay-

ment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

As amended by Act VIII of 1882.

Note the alteration in this section. Only simple imprisonment can be awarded in default of payment of fines inflicted under Excise Act, Stamp Act, and other local and special Acts, when the offence is punishable with fine only. Imprisonment in default on this scale may be awarded even in summary trials. See note under s. 262, Criminal Procedure Code.

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of such imprisonment upon payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine may be levied within six years, or at any time during the term of imprisonment.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period;

And the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Death of offender not to discharge his property from liability.

Only moveable property can be sold. See s. 386, Criminal Procedure Code. The two sections must be read together; and if penal statutes are to be construed strictly, the view of the Bombay High Court is probably correct, namely, that immoveable property cannot be attached even after the offender's death.—5 Bom. H. C. Rep. 63.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence which is made up of several offences.

where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

As amended by Act VIII of 1882.
See notes under ss. 35 and 235, Criminal Procedure Code.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

the lowest punishment is provided if the same punishment is not provided for all.

See ss. 236, 367, Criminal Procedure Code.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and *shall not exceed one* year.

A time not exceeding three months if the term of imprisonment shall exceed one year.

As amended by Act VIII of 1882.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, *or to imprisonment*

of either description for a term which may extend to ten years.

As amended by Act X of 1886.

See s. 348, Criminal Procedure Code, also s. 221 *idem*, as to setting out previous conviction in charge.

If a person commits an offence punishable under chap. xii or xvii of the Penal Code, and, previously to his being convicted, commits another such offence, he is not subject to enhanced punishment for the second offence.—I. L. R., 1 All., 637.

It is not the intention of the Legislature that a previous conviction should enormously enhance the heinousness of petty offences.—1 C. L. R., 481.

The provisions of this section do not apply to attempts. An attempt to commit an offence is punishable under chap. xxiii and not chap. xvii of the Code.—I. L. R., 3 All., 773; 5 Bom., 140; 21 W. R., Cr., 35.

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a.*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b.*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

See Evidence Act, s. 105.

"A general presumption is made that everyone is acquainted with the state of the law and with the nature and extent of his own rights and duties. This presumption is, for the most part, not allowed to be rebutted, though the injustice that might follow from an unswerving application of it is partially modified by certain devices. Exceptional favour is sometimes accorded to women, the young, soldiers, and sailors. The operation of the maxim may also be controlled by diminishing, or wholly relaxing, the penalty which the breach of the law involves, in cases where the moral culpability seems to be more or less reduced in amount by varying degrees of ignorance as to the state of the law."—Amos' Science of Law, p. 111.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

See Act XVIII, 1850, s. 1.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of a Court of Justice.

See Act V, 1861, s. 43, as to immunity of Police-officers serving warrants.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

See s. 99, *infra.*

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Accident in the doing of a lawful act.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without a criminal intent, and to prevent other harm.

Explanation.—It is a question of fact, in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a.*) A, the Captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(*b.*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

In construing this section, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem.*—1 W. R., Cr., 43.

This was a cause in which a girl aged ten had killed her husband when he was asleep, by cutting him on the neck with a *dao.*

The 'consequences of his conduct' mentioned in s. 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act.—22 W. R., Cr., 27.

As to age of criminal liability in various countries, see notes collected under this section in my "Comparative Criminal Jurisprudence." In a case where a child of nine took an ornament from another child, and immediately afterwards sold it for five annas, sufficient maturity of understanding was presumed.—I. L. R., 6 Mad., 373.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

It is not because a man commits a very horrible murder, or because he commits it while labouring under strong passions and feelings, that therefore the world is to assume that he must have been insane when he committed the deed. The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code. Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved.—13 B. L. R., 20.

It must be shown that the accused was incapable of knowing the nature of the particular act charged, or that *such act* was wrong or contrary to law.—24 W. R., Cr., 5.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

Intoxication is no excuse, but it does not make the offence more heinous.—8 B. L. R., App., 21.

In England, the tendency now-a-days is to take drunkenness into consideration as regards the question of knowledge or intent. For intance, it has been held that a drunken man can scarcely entertain that kind of malice, which is the chief ingredient of the crime of murder, and proceeds from a mind possessed of firmness of purpose.—*R* v. *Thomas*, 7 C. & P., 817. See cases collected under this section in my "Comparative Criminal Jurisprudence." The modern law appears to be more reasonable than the Roman law, which looked upon intoxication as an aggravation. '*Qui peccat ebrius, luat sobrius*,' and '*ebrietas crimen incendit*.' The Indian law is perhaps too severe.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

See 5 W. R., Cr., 7; and I. L. R., 6 Calc., 154. See under s. 300, excep. 5, *infra*. *Quære*—In India, can a man consent to the infliction of hurt on himself? Mutilation, to avoid conscription, is an offence in many countries. In England, no one can consent to the infliction upon himself of bodily harm amounting to a maim for any purpose injurious to the public—Stephen's Digest, 207. In New York, self-maiming, to avoid any legal duty, to excite sympathy, or obtain alms, is punishable with one year's imprisonment. See notes under s. 321, Penal Code, in my "Comparative Criminal Jurisprudence."

Act not intended to cause death, done by consent in good faith for the benefit of a person.

88. Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence

by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—or

Consent of a child or person of unsound mind.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

"Misconception of fact." In Louisiana, the case of the medical man pretending that sexual connexion is necessary as an operation is not rape. As to England, see *R.* v. *Flattery* (36 L. T., N. S., 32), and recent Criminal Law Amendment Act (48 and 49 Vict., cap. 69). In Louisiana, carnal knowledge obtained by making the woman believe the offender is

her husband, is rape. In England, it is not.—*R.* v. *Barrow.* See cases under s. 375, Penal Code, in my "Comparative Criminal Jurisprudence."

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in sections 87, 88 and 89.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence 'by reason of such harm;' and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good

faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and, in good faith, intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d.*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

There is no provision in the Code for the case of a wife acting under the coercion of her husband.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

This section embodies the maxim "De minimis non curat lex."

OF THE RIGHT OF PRIVATE DEFENCE.

Nothing done in private defence is an offence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

See 1 C. L. R., 62. Note under s. 105, Evidence Act.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

"We think that, looking to the fact, which is supported by the evidence of all the witnesses for the prosecution, that the crop was raised by Guru Charan; that the attack on the part of the opposite party was a sudden one; that Guru Charan had no time to have recourse to the Police or to the authorities for the protection of his property: that he, Guru Charan, acting under the right of private defence of his property, was justified in resisting a forcible attempt to cut and carry away his crop; and that, in carrying out that right of private defence, and in the riot which ensued, a man on the side of the opposite party was wounded, and subsequently died, as stated above, from the effects of lockjaw. Taking all these circumstances into consideration, and with reference to the ruling in the *Queen* v. *Sachee* (7 W. R., Cr., 112), we think that the

prisoners at the time of the riot were in *actual peaceable possession* of the land in dispute; that the acts of the opposite party, in attempting to cut the crops by force, were clearly illegal; that these acts were such acts as the prisoners had a right to resist; and that, although force was used in carrying out that resistance, we do not think that that force or the injuries inflicted on Masim were such as to exceed the right which the prisoners had to defend their property."—6 B. L. R., App., 9.

But see 7 W. R., Cr., 103, where it was held that there was time to have recourse to the public authorities.

A party in actual possession of land is legally entitled to defend his possession against another party seeking to eject him by force.—2 B. L. R., Ap. Cr., 16.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a.*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b.*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reason-

ably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

A head-constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time not deeming it sufficient, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp—men, women, and children—turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place where such gipsy was being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested and withdrawn himself and his subordinates, or had he effected his escape. *Held*, that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—I. L. R., 3 All., 253.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the com-

mitting of which, or the attempting to commit which, occasions the exercise of the right be an offence of any of the descriptions hereinafter enumerated, namely—

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Where a person, assisted by a friend, retaliated severely on another who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence. Sections 96 and 104 justified him in causing any harm, short of death, to the trespasser: and his friend was also acquitted as having aided him to commit no offence.—20 W. R., Cr., 36.

See 3 W. R., Cr., 41, where it was held that the accused, if acquitted of culpable homicide, could not be convicted of any lesser offence.

In affray respecting land, one party were the aggressors, and the other side (had the affair not ended fatally) would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of s. 104, Penal Code. *Held*, that one year's rigorous imprisonment was sufficient punishment for the latter.—1 W. R., Cr., 34.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property against theft continues till the offender has effected his retreat with the property or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts

to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

See Reg XX of 1817, s. 21, cl. 10, *infra*.

The right of private defence of property against house-breaking does not extend to causing the death of the house-breaker, when he has made his escape from the premises empty handed, and is at some distance from the place.—*Queen* v. *Bolaki Jolahad*, 1 B. L. R., viii.

Where the prisoner, a chowkidar, wounded a fugitive thief with a spear, as there was no other means of securing him,—*held*, that the violence was justifiable.—2 W. R., Cr., 9.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

See ss. 34—37, *supra.*

A subsequent omission to give information does not amount to abetment.—4 B. L. R., Ap. Cr., 7.

Where a head-constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was *held*, that he was guilty of abetment under the words of s. 107, expln. 2.—21 W. R., Cr., 11.

But the mere fact that extortion is committed in the presence of the village chowkidar, without eliciting any disapproval on his part, does not render the chowkidar liable as an abettor.—I. L. R., 8 Calc., 728. Extortion is not an offence which either a private person or a village watchman is bound to report under ss. 44, 45, Criminal Procedure Code. Moreover, it is not a cognizable offence, so that the chowkidar was not bound to prevent its commission. See ss. 149, 151, Criminal Procedure Code.

The supplying of necessary food to a person known to be engaged in crime is not *per se* criminal: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime, and might facilitate it.—I. L. R., 2 Mad., 137.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

The offence of abetment under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.—I. L. R., 1 Bom., 75.

When an abettor and principal are tried together, the former may be convicted, though the latter be acquitted. See remarks of Gill. C. J., in *Reg.* v. *Hughes* (6 Jur., 1877):—"We consider the conviction may be sustained as a substantive absolute felony. Suppose the accessory (abettor) is captured before the principal; under the Statute (11 and 12 Vict., c. 46) he may at once be tried and convicted. If afterwards the principal is taken, tried, and acquitted, has the accessory a right to be discharged? We are of opinion, that he has no such right. His sentence may have expired; is any wrong done him? We think not."

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

See note under s. 378, expln. 5.

Illustrations.

(*a.*) A, with a guilty intention, abets a child or lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence and had committed murder, and he is therefore subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does

not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Where A abetted B to steal his master's property, and B took the property with his master's consent in order to procure A's conviction, *held*, that A was guilty of abetment, though no theft had been committed.—I. L R., 4 Calc., 366.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b.*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c.*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of such an instrument.—I. L. R., 7 Bom., 82. But circumstances may easily be imagined in which the person, in whose favour a document is executed, might be held guilty of abetment of the execution on unstamped paper.

"In pursuance of the conspiracy." See s. 10 of the Evidence Act, and the illustration; also the rule laid down in 17 W. R., Cr., 15.

A man does not necessarily abet a false charge by giving evidence in support of it.—18 W. R., Cr., 28; 8 B. L. R., App., 16.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

Liability of abettor when one act is abetted and a different act is done

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a.*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(*b.*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

(*c.*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in con-

sequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If an act which causes harm be done in consequence of the abetment.

And if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B has murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

And if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend

to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b.*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c.*) A, a Police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d.*) B abets the commission of a robbery by A, a Police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting the commission of an offence by the public, or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

Concealing a design to commit an offence punishable with death or transportation for life.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall,

If the offence be committed.

If that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or,

If the offence be not committed.

If the offence be not committed, with imprisonment of either description for a term which may extend to three years, and in either case shall also be liable to fine.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in

an opposite direction, and thereby misleads the Magistrate, with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

A public servant concealing a design to commit an offence which it is his duty to prevent.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall—

If the offence be committed.

If the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If the offence be punishable with death, &c.

Or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

If the offence be not committed.

Or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and, knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Concealing a design to commit an offence punishable with imprisonment.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or

makes any representation which he knows to be false respecting such design, shall—

If the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth; and,

If the offence be committed.

If the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If not committed.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property

Waging, or attempting to wage, war, or abetting the waging of war, against the Queen.

Illustrations.

(*a*.) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

The sanction of Government is necessary to prosecutions under this Chapter, except s. 127. See s. 196, Criminal Procedure Code.

This section has been held to embrace every description of war, whether by insurrection or invasion, or war *beyond our territories*, and complicity in an abetment of insurrection, invasion, or foreign war.—2 W. R., Cr., 60; 3 W. R., Cr., 16.

121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Conspiracy to commit offences punishable by section 121.

[*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

Inserted by s. 4, Act XXVII, 1870.

Collecting arms, &c., with the intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Concealing with intent to facilitate a design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exciting disaffection.

124A. Whoever, by words either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Govern-

ment established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

[*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.]

Inserted by s. 5, Act XXVII, 1870.

Order of Local Government necessary to prosecution.

Waging war against any Asiatic power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Committing depredation on the territories of any power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126 shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering prisoner of State or war in his custody to escape.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parol within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with impri-

sonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.

Act XXVII, 1870, s. 6.

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of an assault by a soldier or sailor, on his superior officer, when in the execution of his office.

133. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault if the assault is committed.

134. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of the desertion of a soldier or sailor.

135. Whoever abets the desertion of any officer, soldier or sailor in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor in the Army or Navy of the Queen has deserted, harbours such officer, soldier or sailor, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by a soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier or sailor in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Persons subject to Articles of War not punishable under this Code.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing the dress of a soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated an 'unlawful assembly,' if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

"To enforce any right or supposed right." This means an active enforcement of a right not in possession, and does not apply to the defence of a right in possession.—3 W. R., Cr., 43.

Where the intention of parties is not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which has been exercised, they are not members of an unlawful assembly.—23 W. R., Cr., 25. But see I. L. R., 9 Calc., 639, referred to under s. 143, *infra*.

The assembling and forcible interruption of a procession held to be an offence under clause 4, though the accused had acted on the ground that the procession was a nuisance or annoyance to them or their community.—5 Mad. H. C. Rep., App., 6.

See definition of 'offence,' s. 40, *supra*.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being a member of an unlawful assembly.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Punishment.

Where it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with sticks; that they were prepared to use force if necessary; and that the clubmen kept off the opposite party by brandishing their weapons while the land was sowed, *Held*, that the accused were rightly convicted of being members of an unlawful assembly. *Sunker Singh* v. *Burma Mahato* (23 W. R., Cr., 25) distinguished.—I. L. R., 9 Calc., 639.

The case of *Sunker Singh* v. *Burma Mahato* referred to the enjoyment of water actually flowing, and to the protection of the then subsisting enjoyment of this right, under circumstances where there was no time to have recourse to the police authorities.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining an unlawful assembly armed with any deadly weapon.

This section appears to be *personal*. If a few members of a large assembly are armed with swords or guns, they can be punished under this section; but the others, not so armed, can only be punished under s. 143.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Force used by one member in prosecution of common object.

There can be no right of private defence, either on one side or the other, in a case of premeditated riot.—7 W. R., Cr., 34.

The Court remarked: "Both parties were evidently aware of what was likely to happen, for they both turned out in force, and were armed with deadly weapons. Granting that the factory had a perfect right under their contract to re-sow the land of Jeelum with indigo, it is clear that they transgressed the law by doing so, or trying to do so, forcibly.

"There was a Police-station within easy distance, to which they could have applied for assistance if they had a claim to it, and in any case the Civil Courts were open to them to recover damages from Jeelum for breach of his contract. The factory people, who seek to justify their acts under the clauses of s. 105, Penal Code, must show that they applied for the protection of the law, and did what in them lay to procure its intervention."

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

The charge should specify the common object. But see s. 535, Criminal Procedure Code. A plea of right to possession under a lease given is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession, and opposes the entry.—I. L. R., 6 Mad., 246. Much less is it an answer where the cultivator is not a trespasser.

The two opposite parties in a riot should be tried separately.—9 W. R., 33; 12 W. R., 75.

Some *nuqdees* were stationed at a tank to defend it against the violence of those who had no right to it. The opposite party came up to fish in the disputed tank by force. But it was clear that the *nuqdees* also were quite ready for the fight, and indeed, to some extent, induced it by going to meet their opponents as they approached the place in question. *Held*, that as the riot was premediated on both sides, there was no right of private defence.—14 W. R., Cr., 74.

Where five persons, acting together, used force in recovering their cattle which had been seized for trespass, *held*, that they were guilty of rioting.—W. R. (1864), Cr., 21.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment

Rioting, armed with a deadly weapon.

of either description for a term which may extend to three years, or with fine, or with both.

Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence.—1 C. L. R., 521.

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

One member of an unlawful assembly, whose common object was to eject certain persons from a piece of land, the title to which was disputed, fired at and killed one of such persons. *Held*, that the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under s. 149, but of rioting armed with a deadly weapon, under s. 148.—11 B. L. R., 347.

The 'common object' refers to one of the five objects mentioned in s. 141, and are not used in the same sense as the 'common intention' in s. 34, which means the intention of all, whatever it may have been.

If a body of men armed with *latees*, and under the leadership of one who to the knowledge of the rest is armed with a gun, assemble for the purpose of forcibly carrying of another man's property: and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149.—3 C. L. R., 49.

Where a person was killed by a member of an unlawful assembly in prosecution of the common object, being the abduction of that person's mother,—*held*, that all those who were members of the assembly at the time such person was killed were guilty of the offence of killing her.—4 B. L. R., App., 47.

In this case it was proved that the persons had come to carry off Rupa Bibi; that they were at that time members of an unlawful assembly; that they came armed; and that one of their members did strike down and kill Ferman Bibi, the daughter of Rupa Bibi, with a weapon similar to that with which *all of them were armed*. They were prepared to resist any attempt that might be made to prevent them from accomplishing their design, and they were "*prepared to use just such a lethal weapon as one of the members of that assembly did use.*"

The fact that they were all armed with similar weapons appears to be the chief difference between this case and *Queen* v. *Sabed Alli*, 11 B. L. R., 347.

In the case reported at 3 C. L. R., 49, the *leader* was armed with a gun, so that the others could not say they did not know that it was

likely it would be used. So, where several persons were armed with swords, and the accused called out 'strike,' though they did not join in the attack, they were held guilty of murder.—7 W. R., Cr., 58. It may be laid down as a general rule, that where the act is a necessary or probable consequence of the common object, all the members of the assembly are liable for it. For instance, where an appreciable number are armed with spears, and death is caused by a spear.—4 W. R., Cr., 26.

Hiring, or conniving at hiring, of persons to join an unlawful assembly.

150. Whoever hires, or engages or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

See note under s. 127, Criminal Procedure Code.

Assaulting or obstructing public servant when suppressing riot, &c.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall—

Wantonly giving provocation with intent to cause riot.

If the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

If rioting be committed.

And if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

If not committed.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Owner or occupier of land on which an unlawful assembly is held.

In 12 W. R., Cr., 75, Norman, J., said: "Where riot and bloodshed take place as the result of a stand-up fight between the partizans of two rival zemindars, where, as is too often the case, and as the Magistrate has found was the case here, *lattials* are employed on both sides, there can be little or no doubt that the riot is, if not for the benefit of, at least mainly instigated by, the zemindars or their agents."

A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154, 155. Where there is no resident sharer, but only an agent or manager, of course the absentee owner can be held liable under some circumstances.—7 C. L. R., 289.

Liability of person for whose benefit a riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

In a case under this section the High Court remarked, that a zemindar could not avoid his duties and liabilities by residing at the Presidency, that it was his duty to be regularly acquainted with what went on in his zemindary, and to appoint fit and proper persons to manage his local affairs. But they reversed the conviction of a zemindar, on the ground that the dispute was sudden and unpremeditated, and that there was no reasonable or just grounds for inferring that he knew that an affray was pending, or even probable.

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

In order to convict the manager of an indigo factory under this section, it must be shown by legal evidence, (1) that a riot was committed; (2) that it was committed for the benefit of the accused; (3) that the accused had reason to believe that a riot was likely to be committed.—I. L. R., 10 Calc., 338. In this case, one of the Judges speaks of these sections as formidable sections, giving the magistracy powers of startling magnitude. Magistrates administer the law as framed by the Legislature, and they may well feel dissatisfied if the reversal of their

decisions is accompanied by remarks which indicate that the Judge disapproves of the law and manifests a sort of unwillingness to administer it as it stands. Convictions are rare under these sections owing to the difficulty of proving that the accused "had reason to believe" that a riot was likely to be committed. In this particular case it was shown that ryots had been put in possession of the land in dispute by the Civil Court two days before the alleged occurrence; that indigo was then on the land; that factory servants were then present; that the accused (the factory manager) was seen near the land twice the very morning of the occurrence; that, at 10-30 or 11 A. M., a large body of factory servants, armed with *lattees*, and one with a gun, went to the lands where the decree-holders were commencing to plough up the indigo, drove them off, and killed one of them; that the accused was at his house only two miles away at the time of the riot, and that he took no steps to prevent it. These facts clearly amounted to abetment of the riot. As to the conviction under s. 158, Penal Code, the *rioters had actually been punished in the Sessions Court*, and the Sessions record was proof that the riot had been committed. This is manifest from the illustrations to s. 43 of the Evidence Act and other sections of the Act: see 22 W. R., 365, and I. L. R., 3 Bom., 3, 5. The Judges did not say how the riot should be proved, but they surely did not mean that it was necessary to examine again all the witnesses examined in the Sessions Court. The assembly could only have had one object,—namely, to prevent the indigo being ploughed up, an object which they succeeded in acomplishing, from which it might reasonably be inferred that the riot was committed for the benefit of the owner of the land. As to the knowledge of the accused, Mitter, J. mentions the facts that accused was at the factory at the time of the riot, and that amongst the *rioters* were servants of the factory. Moreover, accused had been seen by the land, and the rioters went from the factory. What other possible proof could have been adduced of complicity, except such as to make the accused punishable as an abettor of the riot? It seems to me that the evidence almost, if not quite, justified a conviction for abetment. It is not easy to see wherein lies the "startling magnitude" of a section, which makes a man punishable, who has reason to believe that a riot will be committed for his benefit on land which he claims, and yet does not do what he can to prevent such riot. Magistrates never venture to find fault with the law, and Judges are equally bound "*jus dicere, et non dare.*" It is one of the duties of a commentator to endeavour to enforce adherence to the words of the law and to uphold the intention of the Legislature, a duty which is more imperative in a country where the law is codified. The provisions of a code must be construed according to the fair import of their terms, taken in their usual sense, *with a view to effect its objects* and to promote justice (New York and Louisiana Codes). Importation of private opinion or personal criticism by Judicial Officers of the Legislature is strictly prohibited in other countries, and there is no reason why India should be an exception to this salutary rule. Indeed, the rule should be stronger in India, where many Judges are not only ignorant of the country, the people, and the language, but have a very superficial acquaintance even with the Criminal Codes.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons

have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

To constitute an offence under this section, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the servants of the accused have been taken from a district where men have a well-known character as *lattials*, and had been in his service some time before the riot was perpetrated.—7 C. L. R. 289.

Being hired to take part in an unlawful assembly or riot.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Or to go armed.

And whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Affray.

159. When two or more persons by fighting, in a public place, disturb the public peace, they are said to 'commit an affray.'

An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because, as Coke says, it affrighteth and maketh men afraid.—Coke, 3 Inst. 158.

'Public place.' See s. 510, *infra*. An omnibus passing along a highway is a public place—*R. V. Holmes*, Dears and P. C. C. R., 207; also a railway-station. A house and garden, where an auction was going on, and to which the public had free access, was held to be a place of public resort within the meaning of 5 Geo. IV, c. 83, s. 4, which relates to the arrest without warrant of suspected persons.—*Sewell* v. *Taylor*, 7 C. B., N. S., 160. So, probably, is an enclosed ground, to which persons are admitted by payment.

Punishment for committing affray.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking a gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

'Expecting to be a public servant.'

Explanations.—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

'Gratification.'

The word 'gratification' is not restricted to pecuniary gratifications, or to gratifications estimable in money.

'Legal remuneration.'

The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

'A motive or reward for doing.'

A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*.) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b.*) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that power. A has committed the offence defined in this section.

(*c.*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

As to who are public servants, see s. 21, *supra*. If a person gives a gratification or a bribe after being asked for it, he is not liable as an abettor. But if, without any demand, he offers a bribe, he is so liable. See s. 109, ill. (*a*), *supra*.

The manager of a Court of Wards estate paid into a bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a potdar in the bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s. 161, *held*, that although the money might have been paid on account of Government, it was on behalf of the bank, and not on behalf of the Government, that the money was received by the accused; and that the potdar was a servant of the bank only, and not a public servant within the meaning of cl. 9, s. 21.—I. L. R., 4 Calc., 376.

A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the Special Sub-Registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held*, that the peon was a public servant under the definition in the 9th clause of s. 21, and the trial of the charge against him must be proceeded with.—7 B. L. R., 446.

The offering of a bribe, which is not accepted, is punishable under this section in connection with s. 116, illus. (*a*). Where a person told a juryman that he must act so that the prisoner should be convicted, and also said "there is something in this matter," (meaning something to be had), and afterwards went and offered money to the juryman's brother,—*held*, that he was properly convicted of attempting to bribe the juror.—1 W R., Cr., 36.

If money or property is corruptly taken, or extorted by any ministerial native officer of a Court, the Civil Court shall enforce the refund of the amount or value so taken on a certified copy of the conviction being produced by the aggrieved party. See Reg. III, 1827, s. 5.

Every railway servant shall be deemed a 'public servant' within the meaning of ss. 161, 162, 163, 164, 165 of the Indian Penal Code. See s. 27, Act IV of 1879.

To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as well as explicit terms. Where, therefore, B, who was employed as clerk in the Pension Department, in an interview with A, who was an applicant for a pension, after referring to his own influence in that department, and instancing two cases in

which by that influence increased pensions had been obtained, proceeded to intimate that anything might be effected by '*kanawar*,' and, on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it,—*held*, that the offence of attempting to obtain a bribe was consummated.—I. L. R., 2 All., 283.

Taking a gratification, in order by corrupt or illegal means, to influence a public servant.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking a gratification for the exercise of personal influence with a public servant.

163. Whoever accept or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of the offences above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*.) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

K, a Police-officer employed in a Criminal Court to read the diaries of cases investigated by the Police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been

decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as motive or reward for any of the objects described in s. 161, but as 'dasturi,'—*Held*, that K was not under these circumstances, punishable under s. 161, but under s. 165.—I. L. R., 1. All., 530.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience cause, injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

See notes under s. 217, *infra*, as to what is meant by 'direction of the law.' Police-officers would be punishable under this section, if they infringe the provisions of ss. 61, 62, 103, 154, 155, 167, 169, 172, Criminal Procedure Code. Magistrates are punishable, if, when there is evidence against the accused, they omit to examine him under s 342, Criminal Procedure Code. An Appellate or Revisional Court may be punished under this section, if it reverses a conviction on the ground of there being no charge, and fails to order a retrial, as directed in the 2nd para of s. 535, Criminal Procedure Code. It is extremely unfair that Police-officers should be prosecuted for disobeying the plain directions of the law, and yet that Magistrates and Judges should do so with impunity. Many instances might be adduced in India of the very highest Judicial Officers having disobeyed plain directions of the law, such as that contained in s. 535, Criminal Procedure Code. The words "or knowing it to be likely" are used in s. 166, Penal Code; this phrase is equivalent to the English maxim "every man is presumed to intend the probable consequences of his acts" (contrast wording in s. 425, Penal Code, with that in s. 441, Penal Code.) A Judge must know that to acquit a man on a technical flaw in the teeth of the law must cause injury to the Government, the public, and the private prosecutor, complainant, or injured party. It is a matter for regret that there is no appeal to the Privy Council in criminal matters.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document, in a manner which he knows

or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Compare this section with s. 218, *infra*, which is exclusively triable by the Court of Session.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years or with fine, or with both; and the property, if purchased shall be confiscated.

See s. 19, Act I of 1871, which prohibits Police-officers from purchasing, directly or indirectly, at sales of impounded animals. See 8 B. L. R., App., 1. See also s. 16, Act X of 1886 (s. 559, Criminal Procedure Code). See Reg. II, 1793, s. 15.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be

believed that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding from a public servant.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

To abscond to avoid the service of process, *which has not issued*, is no offence under s. 172. Prosecution must show (1) that a summons, notice, &c, has issued, and (2) that the accused knew or had reason to believe it had issued. Absconding does not necessarily imply change of place. Its etymological and its ordinary sense are to hide one's-self; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply only to the commencement of the concealment. *If a person, having concealed himself before process issues, continues to do so after it has issued, he absconds.*—I. L. R., 4 Mad., 339.

A warrant is not included in the words 'summons, notice, or order.'—5 W. R., Cr., 71.

Campbell, J., thought a warrant was an order, and that a person absconding to avoid service of a warrant might be convicted under this section. The words used in s. 189 of the 1862 Criminal Procedure Code were—'If the warrant cannot be served' The 1872 Code uses the word 'executed.' See s. 87 of the 1882 Code, "So that, upon a warrant issued against him, he cannot be found." A witness who absconds to avoid execution of warrant may be now punished under s. 172 (see s. 87, Criminal Procedure Code, and 9 W. R., Cr., 70).

Preventing service of summons or other proceeding or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A refusal to give a receipt for a summons is not an offence under s. 173.—I. L. R., 3 Calc., 621. The ruling in *Reg.* v. *Kalya Bin Fakir* (5 Bom. H. C. R., Cr., 34) was followed.

See also I. L. R., 5 Mad., 199. But, under the present Criminal Procedure Code, such refusal appears to be an offence under this section. See ss. 69, 70, Criminal Procedure Code; also s. 78, *id.*

Non-attendance in obedience to an order from a public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with

fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*.) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a Zilla Judge as a witness, in obedience to a summons issued by that Zilla Judge, intentionally omits to appear. A has committed the offence defined in this section.

The defendant appeared on the date specified. The Magistrate was unable to take up the case, and a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under s. 174. *Held*, that the conviction was good.—5 Mad. H. C. Rep., App., 15.

Refusal to attend, on the requisition of a Police-officer under ss. 160, 175, Criminal Procedure Code, is punishable under this section.

Where the summons did not specify the place or time of attendance, a conviction under this section was upset.—I. L. R., 5 All., 7; 7 Mad. H. C. R., App., 14. The rule that Sunday is a *dies non juridicus* is not applicable to India.

It was ruled by a Madras Full Bench that, under Act III of 1869 (Madras), Collectors and their subordinate officers may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purposes of administration.—I. L. R., 7 Mad., 197. The Court remarked, that, having regard to the intention of the Act, as explained by its preamble, a *favourable* construction should be put upon it. The rule as to construing penal statutes strictly has been formally abrogated in the New York, Louisiana, and other Codes.

An accused person may be proceeded against under s. 174, Penal Code, notwithstanding the fact that his surety has been already made to pay up in consequence of the default of appearance of accused.—1 B. L. R., Ap. Cr., 1.

An offence under this section cannot be tried by the Magistrate whose process has been disobeyed.—5 B. L. R., 100.

Omission to produce a document to a public servant by a person legally bound to produce such document.

175. Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Civil Courts and Sub-Registrars are bound to send unstamped documents to the Collector. See also ss. 94, 95, Criminal Procedure Code.

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

See notes under s. 45, Criminal Procedue Code. See Act VI, 1870, B. C., s. 41, as to obligations of chokidari panchayets in Bengal.

Under Act V of 1861, a Police-officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of this section.—21 W. R., Cr., 30.

See definition of 'offence,' s. 40, *supra*.

A landholder cannot free himself from his legal obligations by any private arrangement with a ticcadar or other lessee.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes as true information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description

for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b.*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police-station, wilfully misinforms the Police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of s. 177. *Held*, that s. 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior To make false returns was therefore an offence.—6 Mad. H. C. Rep., App., 48. See also I. L. R., 4 Mad., 144. But the Allahabad High Court have held differently. A person attempted to obtain his recruitment in the Police of a district by falsely stating that he was an inhabitant of another district (there being a rule prohibiting the enlistment of inhabitants of the same district): *Held*, no offence under s. 177 or 182, and that there had been no attempt to cheat under s. 415.—I. L. R., 6 All., 97. The act surely falls under s. 182.

Road cess overseers submitting false diaries of their journeys would be punishable under this section, when they are ordered by their superior officers to submit such diaries. The words "legally bound" appear to be wider than the words "disobey any direction of the law" in ss. 166, 217, Penal Code.

Refusing oath when duly required to take oath by a public servant.

178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself, by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer a public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject

by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Quære.—Is an accused person who refuses to sign his statement recorded under s. 364, Criminal Procedure Code, liable under this section?—I. L. R., 4 Bomb., 15.

The words of the section certainly include such a case.

False statement on oath to public servant or person authorized to administer an oath.

181. Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

It is necessary to show that the public servant was empowered to administer an oath.—I L R., 5 All., 17. In this case a conviction was upset for making a false statement before a Deputy Collector deputed by a Collector to enquire into an application for refund of stamp-duty under Chapter VI of Act I of 1879. *Held*, that the Collector could not delegate his authority. But the conviction might have been upheld under s. 177, *supra*.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public

servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a.*) A informs a Magistrate that Z, a Police-officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b.*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

See s. 211, Penal Code, and rulings thereunder. This is not the only instance of tautology in the Code, and attempts to distinguish only result in a chaotic mass of contradictory rulings. A man who brings a false charge before a public servant can be tried under this section or under the 1st para of s. 211.—I. L. R., 5 Calc., 184. The judgment of Pinhey, J., in I. L. R., 7 Bomb., 184, reads like a schoolman's quibble: "The accused did not merely falsely inform the chief constable that he had been robbed, *but he complained that Gunpat had robbed him!*" The chief constable was bound to investigate such an information made, as it was, against a specific person named. False charges of offences cannot be distinguished, though there may be some informations which would fall under s. 182, without falling under s 211. There is another ruling (8 W. R., Cr., 67) that (1) if the false information given amounts to a charge of an offence exclusively triable by a Court of Session, the prosecution should be under s. 211; (2) if the alleged false charge was of an offence punishable with *seven years' imprisonment or* upwards, the case comes under the 2nd para. of s 211, and is not triable by a Magistrate. But cases under the 2nd para. may be triable by a Magistrate, for instance, a false charge of theft in a house under s. 380 (punishable with seven years). It will be seen from the schedule that a Magistrate is only debarred from trying cases falling under the 2nd para. of s. 211, when the offence charged is punishable with imprisonment for a term *exceeding seven years.* The Judges who gave the above ruling were evidently not aware of the different wording in the schedule. As to the first part of the ruling, some offences punishable with *only three* years imprisonment (*e. g.*, s. 218, Penal Code) are exclusively triable by the Court of Session. So that the ruling is clearly wrong in both points. It is much to be regretted that such rulings cannot be weeded out by a legislative commission, or periodically brought before a Full Bench. An attempt has also been made at 7 C. L. R., 382, to distinguish between s. 182 and s. 211, by saying that the former applies to informations made to a public servant, and the latter to false charges of an offence involving criminal proceedings. But the distinction is of no practical value, as is clear from the illustrations. The neglect of duty and the keeping of contrband salt are both offences.

The Madras High Court upheld a conviction under this section, though the case also fell under the 2nd para. of s. 211. They remarked: "Where the evidence discloses an offence of a graver character beyond the jurisdiction of the tribunal, this Court may quash the conviction and sentence for the minor offence, and direct a trial before a competent tribunal (see s. 423, Criminal Procedure Code). *It has also been repeatedly held that whether it will do so or not is a question not of law, but of expediency on the facts of the particular case.*"—7 Mad. H. C., App., 7; see also ruling at I. L. R., 4 Mad., 241. The ruling of Straight, J., at I. L. R., 5 All., 36, appears to have been based on some misconception, for the police had actually sanctioned the prosecution, and the Magistrate is the head of the police.

Where a Police-officer reports a case in C False Form, and suggests the advisability of a prosecution, that is a sufficient sanction for prosecution. See 19 W. R., Cr., 35.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

If the public servant has attached and is bringing away the property, and it is then rescued from him, the offence amounts to theft.

Where a warrant of attachment was returnable on or before the 3rd February, and resistance was offered to the peon on the 4th, *held*, that a conviction was bad, as there was no lawful authority. See 2nd clause of s. 251 of the Code of Civil Procedure.—I. L. R., 10 Calc., 18.

Obstructing sale of property offered for sale by authority of a public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of a public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either

description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

"Any sale of property." These words are very wide, and would include an auction-sale of excise shops. See 3 W. R., Cr., 33.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

See note under s. 441, *infra*.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with, or guilty of, an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

See Reg. XX of 1817, s. 21, para. 10: "It shall be incumbent on the inhabitants of the villages through which, or near to which, the pursuit may lie, to afford, on the requisition of the village watchmen or other Police-officer, every practicable assistance towards the apprehension of the robbers or other offenders, and recovery of any property stolen or plundered by them, continuing the pursuit from village to village."

A Magistrate directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the Police." *Held*, that such order was not authorized by ss. 90 and 91, Criminal Procedure Code (ss. 42—45 of the present Procedure Code), and the conviction of such landholder, under ss. 187 and 188, Penal Code, for disobedience to such order, was not maintainable.—I. L. R., 3 All., 201.

See Reg. XI of 1806, s, 8, which relates to the supply of carts and bullocks, bearers, &c., for troops and private travellers. The Police are bound to furnish assistance, and, for refusal, would be punishable under s. 187 or s. 166 Penal Code, according as the person requiring aid is a public servant or private person. Moreover, a legal obligation is imposed on bearers and owners of carts, and there would be no right of private defence, provided the Police do not transgress the third paragraph of the section of the Regulation.

See ss. 42, 78, 103, 128, &c., Criminal Procedure Code.

Quære.—Can a zemindar who intentionally neglects to nominate a chokidar in the place of a deceased chokidar be punished under this section? See Reg. XX of 1817, s. 21, para 1. and Act VI of 1870, B. C., s. 41, as to the obligation of panchayets to appoint chokidars. If the law imposes a legal obligation, its infraction must be punishable. It is a well-established principle of criminal law (Kent Comm., Vol. i, p. 466) that the statutory direction is equally efficacious, and the illegality of a breach of the statute the same, whether a thing be prohibited absolutely or only under a penalty. The ruling at 7 C. L. R., 575, is probably unsound.

In this case a perwana had been issued to the *agent* of the accused, calling on him to nominate a watchman. The Court remarked: "The section applies to *direct* refusal or omission of a person bound by law to render or furnish assistance." Apparently the agent might have been punished, or the zemindar, had the perwana gone *direct* to him. The judgment of the Court is not very clear, as the report is meagre and incorrect.

Disobedience to an order duly promulgated by a public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows

of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order and thereby causes danger of riot. A has committed the offence defined in this section.

Section 188 applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party

The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt.—I. L. R., 6 Calc., 445.

See notes under s. 441, *infra*.

It must be shewn that the order disobeyed was legal.—I. L. R., 6 Calc., 88.

It was ruled in this case that orders made by executive authority cannot be questioned by judicial authority, until an attempt is made to enforce the exaction of a penalty for disobedience of such order.

Threat of injury to a public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce any person to refrain from applying for protection to a public servant.

190. Whoever holds out any threat of injury to any person, for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a.*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b.*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z Here A states that which he knows to be false, and therefore gives false evidence.

(*c.*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d.*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e.*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

A person filing a written statement in a suit is bound by law to state the truth, and if he intentionally makes a false statement, he is guilty of giving false evidence.—I. L. R., 6 All., 626.

In this case Straight, J., said:—"My experience in this Court has been such as to satisfy me that there is a too common notion abroad that false statements may be made in pleadings in suits with impunity."

A false statement to a Police-officer under s. 161, Criminal Procedure Code. is now punishable under s. 191, Penal Code.—*I. L. R.*, 10 Calc., 405; I. L. R., 8 Bomb., 216.

Materiality of subject-matter of statement is not a substantial part of the offence of giving false evidence.—1 Mad. H. C. Rep., 38.

But Scotland, J., remarked, that, in some cases, where the statement is *wholly immaterial*, the making it may be attributed to indifference or carelessness. The word "material" was advisedly omitted in ss. 191 and 193 of Penal Code, and advisedly inserted in the definition of "fabricating false evidence" (see ss. 192, 197, 198, 199, and 200.) Bittleston, J., well remarked:—"It is hard to say that any statement made during a proceeding may not have some appreciable influence on the result. Of course, a prisoner should not be convicted if the subject-matter of his statement appears to have been so immaterial as to leave it doubtful whether his falsehood could have been intentional."

It is not necessary to show that the false statements were material (6 W. R., Cr., 84). or that they should have any bearing upon the matter in issue.—16 W. R., Cr., 37.

The point in issue was, whether certain articles were the property of complainant or accused. Some witnesses, not knowing anything one way or the other, swore the clothes belonged to the complainant. *Held*, that they were properly convicted of giving false evidence—2 W. R., Cr., 47.

It is sufficient if the accused has made a statement which is false, whether it has been taken down or not.—9 W. R., Cr. Let., 8.

A person who makes a false statement upon oath before a Police patel acting under s. 13 of Bombay Act VIII of 1867, gives false evidence within the meaning of this section.—I. L. R., 4 Bomb., 479.

The deposition of a witness in a civil suit taken down in a language other than that in which the evidence was given, is not admissible in evidence in a prosecution against him for perjury in respect of the statements made by him, unless the provisions of ss. 182 and 183 of the Civil Procedure Code, Act X of 1877, have been complied with.—8 C. L. R., 292.

See also s. 339 of the Criminal Procedure Code of 1872 (s. 360 of the present Code). Reading over the evidence to each witness occupies much time: and the law in this respect is not even observed in Sessions trials by the High Court; so that the above ruling is somewhat deplorable.

There are some very doubtful rulings, in which convictions for giving false evidence were reversed owing to somewhat technical flaws, for instance, that an oath was administered without authority.—I. L. R., 6 All., 103; 5 All., 17; 6 Mad., 252. The Court in each case had authority to take the statements, and, if witnesses are bound to speak the truth before the Police, *à fortiori* they are so bound before a Court of law. In a Bombay case, a witness had actually given false evidence on oath, but the conviction was reversed, as there was no proper sanction for the prosecution during which the false evidence was given.—8 Bom. H. C. R., 37. The Indian law regarding perjury is wider than the English law, and yet these rulings actually make it narrower. It has been held in several cases in England that, when false evidence is actually given on oath in a Court of law, the offence is complete, notwithstanding any error, such as, for instance, irregularity in the institution of the proceedings. See *R* v. *Barry*, 8 Cox, C. C., 121. This is one of several instances in which High Court rulings have made the Indian law narrower than the English, though the words of the Code are wider than the words of the English statute-law. See, for instance, notes under s. 511, *infra*.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said 'to fabricate false evidence.'

Illustrations.

(*a.*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b.*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c.*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

"*Intending* that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding." It is not necessary that the false entry should be evidence in itself: it is sufficient if the person making it intends that it may appear in evidence. See definition of 'document' in s. 29 of the Penal Code: "Any matter . . . . . *intended to be used* or which may be used as evidence." A peon, who falsely certifies on the back of a summons, that he has served it in a certain village, when, as a matter of fact, he has never been to the village, is guilty of fabricating false evidence. It is the intention of the peon that the Magistrate issuing the summons should believe his certificate. If the Magistrate believe the certificate, he might refuse to adjourn the case (see s. 344, Criminal Procedure Code). In many cases a party purposely keeps his witnesses away, and then tells the Court that they are afraid to come owing to the influence of the other party. A false certificate regarding the serving of processes might materially affect the result of a case before a Magistrate. See also Expln. I to s. 29: "It is immaterial whether the evidence is intended for, or may be used in, a Court of Justice or not." See 2 B. L. R., Ap. Cr., 12; and note under is 464, *infra*.

But the Allahabad High Court have ruled differently. Only a single Judge was sitting, Mr. Justice Straight, and the correctness of his ruling is open to question.—I. L. R., 6 All., 42.

Where the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there

is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464, Penal Code, but fabricating false evidence and using such evidence.—I. L. R., 6 Calc., 482.

The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that steps might be taken to enforce payment, and was convicted under s. 465, Penal Code. *Held* on appeal, that the accused ought to have been convicted under s. 192, which is not confined to false evidence to be used in judicial proceedings.—7 C. L. R., 356.

See note under s. 466, *infra*.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of lands, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

It has been recently ruled that a person may be convicted on an alternative charge in respect of two contradictory statements made in *one* deposition. The law is not affected by s. 233, Criminal Procedure Code, nor by the decision in *R.* v. *Bedoo Noshyo*, 12 W. R., Cr., 11; I. L. R., 10 Calc., 937. The contradictory statements were made in cross-examination and re-examination respectively. Norris, J., remarked, that it would be unsafe for a witness to correct his deposition. Such a remark presupposes that all Magistrates and Judges are utterly devoid of ordinary discretion. There was no question of correction. The two statements were diametrically opposed; both were intentionally made, and the witness must have known that one was false. On this point Tottenham, J., very sensibly remarked, that no man would be convicted for merely correcting an error: "No Court would sanction the prosecution of a witness, unless satisfied that he had deliberately and intentionally made the two contradictory statements, intending in one or other instance to state what he knew to be untrue or did not know to be true .... The essence of the offence is the *intention*, and that may exist where the contradiction is in various stages of a single deposition, as well as where it is manifested in two distinct proceedings." Section 554, Criminal Procedure Code, which prescribes the use of the forms in the schedule, expressly provides for such modifications in the forms as the circumstances of cases may require. See also I. L. R., 7 All., 44, where it is held that English cases are quite irrelevant, as the law of perjury is different in England. It had previously been held in many cases that a conviction in the alternative was legal, provided the statements were radically contradictory. "It must be matter of evidence whether they are *per se* so irreconcilable, that one of them is necessarily false, and also that the prisoner in making them intentionally spoke falsely in regard to one of them."—13 B. L. R., 324; *R.* v. *Musamat Zameerun*, 2 Rev. Cr. Rep., 49; 4 Mad. H. C. R., 51; 1 Mad. H. C., 38, *et aliunde*. Had Straight, J., known the previous case-law, he, probably, would have held a different opinion in I. L. R., 5 All., 17. See also 8 W. R., Cr., 79, where one statement was made before the Magistrate and the other before the Civil Court.

A preliminary Police investigation is a stage of a judicial proceeding.—3 W. R., Cr., 59. See s. 4 (*d*), Criminal Procedure Code.

Section 537, Criminal Procedure Code, enacts, that no order shall be reversed on the ground of the want of any sanction, unless a failure of justice has been occasioned. But Tyrrell, J., appears to have overruled this provision of the law. See I. L. R., 6 All., 98, in which the officer, whose sanction was required, had virtually given sanction. Where a Magistrate, before whom a witness had given false evidence, committed him for trial, *held*, that his sanction must be implied.—8 Bom. H. C., 54.

It is essential, in order to sustain a charge under this section, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in that proceeding was made.—1 B. L. R., Ap. Cr., 13. See s. 80 of Act I of 1872 (Evidence Act). False evidence not given in a judicial proceeding is punishable under the latter part of the section.

Ordinarily, a number of persons should not be charged jointly with having given false evidence in the course of one judicial proceeding. "It may occasionally be convenient and proper that they should be so tried; but then the Court requires to be most careful in keeping the case of each prisoner distinct from that of the others, and in seeing that the case against each is complete in itself in all its details."—7 B. L. R., Ap. Cr., 66.

As to trying several prisoners jointly for giving false evidence in the same proceeding, see notes under s. 239, Criminal Procedure Code. The weight of rulings appears to be, that they may be jointly tried, provided each is charged with his own words: and this is the clear intention of the Legislature. No weight can be attached to the ruling at I. L. R., 5 All., 17, which actually rules that a man cannot be convicted on an alternative charge. Where there is such a conflict of rulings, Magistrates would do well to follow the words of the law (s. 239, Criminal Procedure Code).

A false statement as to relationship was punished by the Sessions Judge with five years' rigorous imprisonment. The false statement consisted in the witness having falsely said that he was not the complainant's brother. The High Court reduced the sentence to one year.—5 W. R., Cr., 95.

The making of a false return of service of summons is punishable under this section.—8 W. R., Cr., 27.

A statement, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court.—19 W. R., Cr., 69. See under s. 191, *supra*.

Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender,—*held*, that the Magistrate was right in convicting and punishing for the two separate offences of fabricating false evidence and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—I. L. R., 1 All., 379.

Where the accused was charged, under s. 193, with having given false evidence, in that he denied having made certain statements which he was alleged to have made to the Inspector of Police, that officer was examined and merely put in two documents containing the statements alleged as the records of what had taken place. *Held*, that these documents being inadmissible in evidence under s. 119, Criminal Procedure Code (s. 162 of the present Code), evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police.—6 C. L. R., 47.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code or the law of England [s. 7, Act XXVII of 1870] shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

If innocent person be thereby convicted and executed.

And if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

It is not necessary, under this section, that the false evidence which is given should be evidence given in a Court of Justice. A statement

the intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Where a peon has delegated his duty to another party, and has reported as if he had served the summons himself, there can be no conviction under this section. But there may be a conviction under s. 193, Penal Code, or s. 181, Penal Code. See 8 W. R., Cr., 27.

A Police-officer negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29 of Act V of 1861, in cases where the proof is insufficient to bring the case under s. 218, Penal Code.—15 W. R., Cr., 17.

See s. 167, *ante*.

A public servant in charge, as such, of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents, with the intention of screening himself from punishment.—*Held*, that such fabricated documents, not being records or writings with the preparation of which such public servant as such was charged, he could not be convicted under s. 218, nor could he be convicted under s. 471, as they were not made with the intent specified in s. 463.—I. L. R., 5 All., 553.

But if the papers were fabricated with the intent stated in s. 192, he would be guilty under s. 193. A retrial was ordered by the High Court under this section.

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with death; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which mayextend to ten years; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody [s. 8, Act XXVII of 1870], intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to immaterial escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or

without fine, if the person in confinement or who ought to have been apprehended is under sentence of death; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended is subject, by sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

Escape from confinement or custody negligently suffered by a public servant.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, or lawfully committed to custody [s. 8, Act XXVII of 1870], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Convict warders are public servants within the meaning of this section.—7 W. R., Cr., 99.

This section does not apply to cases where the person suffered to escape has merely been arrested under civil process.—I. L. R., 12 Calc., 190. All other cases are now covered by ss. 225A and 225B.—Act X of 1886, s. 24.

Where the Magistrate had sent a person charged with an offence to the District Superintendent of Police, with an order "if a report of this matter be made, the case may be sent up according to rule with the papers," *held*, that such order might be taken to have been passed under s. 167 of the Criminal Procedure Code. Therefore A, to whom the District Superintendent made over the accused, was bound to detain him, and, having negligently suffered him to escape, was properly convicted under s. 223.—I. L. R., 6 All., 129.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape

from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Where a person actually apprehended on a charge of a cognizable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged.—24 W. R., Cr., 45.

As to escape from civil custody, and also from custody under the process of a Revenue Court, see now s. 225B, *infra*.

Where the arresting officer has not the warrant with him, the apprehension would not be lawful. See s. 80, Criminal Procedure Code; I. L. R., 5 All., 318.

The arrest must be a lawful arrest by a person authorized by law to arrest.—I. L. R., 5 Mad., 22.

Resistance or obstruction to the lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Punishment.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

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Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

225*A*. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement, any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

This section is substituted by s. 23, Act X of 1886.

Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.

225*B*. Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

This section is added by s. 23, Act X of 1886. Section 651 of the Code of Civil Procedure is hereby repealed.

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

228. Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

See ss. 480—487, Criminal Procedure Code.

For spectators to indulge in any outburst of joy or pity is a contempt.—*R.* v. *Bether*, 8 St. Tr., 759.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

Coin' defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used. [XIX of 1872.]

Queen's coin.

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Illustrations.

(*a*.) Cowries are not coin.
(*b*.) Lumps of unstamped copper, though used as money, are not coin.
(*c*.) Medals are not coin, inasmuch as they are not intended to be used as money.
(*d*.) The coin denominated as the Company's rupee is the Queen's coin.

Counterfeiting coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, andshall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

See definition of 'counterfeit,' s. 28, *supra*. Also see under s. 483, *infra*. The explanation to the section is an illustration, and not an exhaustive definition.

Counterfeiting the Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purposes of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See s. 27, *supra*.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import or export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be be liable to fine.

Delivery to another of coin possessed with the knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin which at the time when he became possessed of it he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

The usual practice is to call as a witness a silversmith of the town where the trial takes place, who examines the coin in Court in the presence of the jury.—Davis's C. L., 235.

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—23 W. R., Cr., 4.

See Evidence Act, ss. 14, 15.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Delivery to another of coin as genuine, which when first possessed, the deliverer did not know to be counterfeit.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240 as the case may be.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

248 Whoever performs on any coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in Section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in Section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Section 247or 249 has been committed, having known at the time of becoming pos-

sessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Counterfeiting a Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

The counterfeiting of bank notes appear to fall under ss. 475, 476, *infra*.

Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for the purpose of counterfeiting a Government stamp.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp

may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using a Government stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The fraudulent manipulation of a true instrument amounts to cheating.—2 W. R., Cr., 65.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See s. 153, Criminal Procedure Code.

Making or selling false weights or measures.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

See notes under ss. 133, 144, Criminal Procedure Code. No license and no length of enjoyment can legalize a public nuisance.—7 B. L. R., 499. "The license," says Lord Tenderden, in *R.* v. *Cross* (2 C. & P., 284), will "not entitle the defendant to continue the business one hour after it becomes a public nuisance to the neighbourhood."

It was held, in Kentucky, to be an indictable public nuisance to keep the iron rails of a railroad six or eight inches above the level of a highway at a public crossing. The French law is very stringent as regards acts prejudicial to health, sanitation, or the public convenience. The Penal Code punishes noises which disturb the tranquillity of the inhabitants, diminution of the *width or safety* of any public way, infringement of executive orders, &c. Sections 283 and 291 of the Indian Penal Code are

cognizable, but the Police are very remiss in taking up cases under these sections. All cases of encroachments on roads fall under s. 268, Penal Code. Many nuisances (*e. g.*, music and beating of drums) are tolerated in India, which would not be tolerated in other countries. "A common nuisance is an act not warranted by law, or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects."—Stephen's Digest. As regards acts and omissions that have been held to be public nuisances in America, England, France, Germany, &c., see cases collected under this section in my "Comparative Criminal Jurisprudence."

'Public.' See definition of 'public,' s. 12, *supra*. A municipal corporation can be prosecuted under the Penal Code for being guilty of a public nuisance. The right to prosecute any person, or body of persons, by whom any one may have been injured is a common right, which can only be limited by special legislation. Such a right cannot be taken away unless by express words or by necessary implication.

Per WHITE, J.—It is doubtful whether a corporation is a public servant at all, but assuming it is, neither the Corporation of Calcutta, nor any of its members, is a public servant removeable by Government—2 C.L. R., 520.

A corporation may be proceded against criminally, as well for a misfeasance as for a nonfeasance.—*Reg.* v. *The Birmingham* and *Gloucester Railway Co.*, 3 Q. B. Rep., 223; *Reg.* v. *Scott*, 3 *id.*, 547; and *Reg.* v. *The Great Northern England Railway Co.*, 9 *id.*, 315.

The corporation, if convicted, cannot be punished by imprisonment, but only by fine. Therefore, the same reasons for requiring Government sanction to a prosecution do not apply as to a public servant.

Omission to fence a well in a back yard on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance. It was *held* not to be an illegal omission (s. 43, Penal Code). In England, a man is bound by Statute to fence wells in his premises within 25 yards of, and open to, the highway. There is no such statutory obligation in India.—I. L. R., 6 Mad., 280.

The English law appears to go much further than the Indian law in making a master criminally responsible for the acts of his agent or servant. The owner of works carried on for his benefit by his agents and servants is liable to an indictment for a nuisance, resulting from the mode of carrying on the business, *although such nuisance was committed in opposition to his orders*, and without his knowledge, the proceedings by indictment in such case being *criminal in form only*.—*R.* v. *Stephens*, 1 L. R., Q. B., 702. This is the reason why holders of excise licenses are punishable for breaches committed by their servants. The offence is really a collectorate or fiscal offence, for which the Collector might punish in other ways. Sir R. K. Wilson, Reader in Indian Law to the University of Cambridge, thinks that the Indian law on this point is the same as the English law: "The section speaks of causing, &c., by *illegal omission* (and these words might, under s. 32, have been implied, if not expressed); 'illegal' includes any thing which furnishes ground for a civil action (s. 43). There is the less hardship in this, as the penalty for a simple nuisance is fine only (s. 290)." I think there can be no doubt that Sir R. K. Wilson is correct, but I had written my note rather with reference to Indian decided cases, which, as has been pointed out both in this work and in my "Comparative Criminal Jurisprudence," are often inconsonant with the words of the Code. It is of course the duty of a commentator to protect a Code from pseudo-interpretations, and to endeavour to enforce adherence to the words and intention of the Legislature.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life.

K, knowing that he was suffering from cholera, travelled as a passenger in a train without informing the railway servants of his condition. M, knowing his condition, bought K's ticket, and travelled with him. *Held*, that K was guilty under s. 269, and M was guilty of abetment.—I. L. R., 7 Mad, 276.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Malignant act likely to spread infection of any disease dangerous to life.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to a quarantine rule.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink which is intended for sale.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason

Sale of noxious food or drink.

to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of any drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Fouling the water of a public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for

a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

The words 'public spring or reservoir' used in this section do not include a public river. The strewing of branches in a river for fishing purposes, *held*, therefore, to be no offence under this section.—I. L. R., 2 Calc., 383.

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place, so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of a vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exhibition of a false light, mark or buoy.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either

description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

See also Reg. VI of 1819, s. 13.

Danger or obstruction in a public way or navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

A Magistrate issued an order warning owners of cattle to take proper care of them, and not to let them loose without somebody to look after them: and punished disobedience of such order under s. 188, Penal Code. The High Court, while upsetting the conviction under s. 188, intimated their opinion that the accused might have been properly punished under s. 283, Penal Code.—B. L. R., Ap. Cr., 45.

A man who, by ploughing or planting a hedge or otherwise, includes in his own land a portion of a public foot-path, is guilty under this section and s. 268.—6 Mad. H. C., App., 26.

If a man cuts away and damages an *ail* between his and a neighbour's field, and there is no right of way over such *ail*, the offence is mischief.

The words 'take order with' appear to be equivalent to take care or precaution.

Negligent conduct with respect to any poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession

as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

See definition of 'injury,' *supra*, s. 44.

Negligent conduct with respect to any explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to any animal.

The High Court, on a reference by the Sessions Judge, refused to interfere with an order of a Magistrate fining the owner of a pony, which had been tied negligently and was running about loose in a crowded bazar, thereby endangering the lives and limbs of persons.—19 W. R., Cr., 1.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c., of obscene books.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public

Having in possession obscene book for sale or exhibition.

exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.

294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

The Magistrate, in convicting under s. 292 or s. 294, should, in his decision, state distinctly what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections.—I. L. R., 1 Calc., 356.

Keeping lottery-office.

294*A*. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees. [Act XXVII of 1870.]

Order of Local Government necessary to prosecution under this section.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling a place of worship with intent to insult the religion of any class.

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their

religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing a religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See note as to musical processions under s. 144, Criminal Procedure Code. See also s. 31, Act V of 1861.

The members of a religious sect are at liberty to erect a place of worship contiguous to a place of worship belonging to another sect.—9 C. L. R., 303, following I. L. R., 2 Mad., 143. But it was laid down that the right to perform worship is subject to the proviso that the worshippers do not cause material annoyance to their neighbours.

In affording special protection to persons assembled for religious worship or ceremonies, the law points to congregational rather than private worship, and it may fairly be required of congregations that they should inform the Magistrate or the Police at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public street for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night.—I. L. R., 2 Mad., 140; 6 Mad., 203.

Trespassing on burial places, &c.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A, B, C, and D were co-owners of a plot of land in which they were accustomed to bury their dead. A and B opened a saw-pit close to the graves of D's relatives, but did not disturb any of the graves. *Held*, that they were wrongly convicted under this section.—I. L. R., 3 Mad., 178.

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

298. Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences Affecting Life.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*.) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b*.) A knows Z to be behind a bush, B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*.) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Under this section an offence may amount only to culpable homicide not amounting to murder, although none of the exceptions specified in s. 300 are applicable to the case.—8 W. R., Cr., 47.

See Evidence Act, ss. 6, 7, 8, 14.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act, without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a.*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b.*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(*c.*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d.*) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

When culpable homicide is not murder.

The above exception is subject to the following provisoes:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(*a.*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b.*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c.*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d.*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z This is murder.

(*e.*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B B is by this provocation excited to violent rage A a bystander, intending to take advantage of B's rage, and to cause him

to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

If a man finds his wife in the act of committing adultery, and kills her, this will be but manslaughter only, provided the provocation deprived him of self-control; but if a man takes away the life of a woman, even his own wife, because he suspects, however strongly, that she has been engaged in some illicit intrigue, this will be murder.—*R.* v. *Kelley*, 2 C. and K., 814. Similarly, if he kills the adulterer.—*Pearson's Case*, 2 Lewin, C. C., 216.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Defendant and deceased had a drunken quarrel, and defendant, the more powerful man of the two, throttled deceased and killed him. This exception was held not to apply.—5 W. R., Cr., 58.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of

eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death ; A has therefore abetted murder.

Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of these persons died. *Held*, that the offence was murder under cls. 2 and 3 of s. 300, unless it could be brought within the fifth exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder.—B. L. R., Ap. Cr , 25.

Mere absence of premeditation will not reduce the crime of murder to culpable homicide not amounting to murder —3 W. R., Cr., 40.

The offences of murder and of culpable homicide not amounting to murder each suppose an intention or knowledge of the likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—4 W. R , Cr., 23.

The provocation should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.—I. L R , 2 Mad., 122.

The deceased had gone accompanied by the Police to serve a notice of sale of prisoner's crop. When the Police and deceased separated, prisoner rushed out with a sword, and struck deceased on the head with it, so that he died within four days. The Sessions Court held, that the offence was reduced from murder under Excep. 1 of s. 300. The High Court were of opinion that murder had been committed. Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.—1 B. L. R., Ap. Cr., 11. See also 10 W. R., Cr., 26.

When the act is done after the first excitement has passed away, and there has been time to cool, it is murder.—4 B. L. R., Ap. Cr., 6.

In this case the prisoner found the deceased in the act of copulating with his (the prisoner's) wife. It was proved that, after beating the deceased, the prisoner carried him off still alive and groaning, and on arriving at the banks of the river cut off his head, throwing afterwards head and trunk into the river. This act was held to be murder.

The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof and struck deceased with his sword in several places, from the effects of which he died. *Held*, that the offence was culpable homicide not amounting to murder. The High Court sentenced the prisoner to eight months' imprisonment only.—3 B. L R., A. Cr., 32.

Where a thief was caught house-breaking at night with half his body and his head through the wall of a house occupied by women and the

prisoner and his young idiot son, and where the prisoner suddenly caught up a sort of pole-axe, and struck the thief with it five times on the neck, and nearly cut off his head,—*Held*, that the offence was not murder, as it was committed in the exercise of the right of private defence; but that as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder. Under the circumstances, the High Court reduced the sentence to four months' imprisonment.—6 W. R., Cr., 50.

In a rioting case, which resulted in the death of one of the rioters, it was held by the Judge of Backergunge, that, when persons of full age voluntarily engage in a fight with deadly weapons, they take the risk of death with their own consent, and that, as a consequence, culpable homicide occurring in such a fight is not murder. The High Court held, that Excep. 5 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. The High Court remarked that if the Judge's view were correct, the fourth exception would be superfluous (I. L. R., 5 Calc., 31). The same case is reported at 4 C. L. R., 285. But Field, J., has since adopted the view taken by the Judge of Backergunge (Mr. Verner), see *infra*.

Where a man above eighteen years, submits himself to emasculation performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—5 W. R., Cr., 7.

Where death results from a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—I. L. R., 6 Calc., 154.

"The fifth exception extends to all cases of death occasioned by, or resulting from, premeditated acts, where the party killed takes the risk of death with his own consent. The fourth exception is an independent exception, applying to all cases of death occurring in the course of sudden and unpremeditated fight, and does not in any way bind the natural operation of the fifth exception."

Field, J., said:—"I think it is reasonable to say that, in entering on the conflict, each party had for its object to fight for victory, and in doing so, knowingly and deliberately took upon itself the risks of the encounter; to this state of facts I agree that the fifth exception to s. 300 is applicable, and I do not think it very material which party were, in the first instance, the actual aggressors, though this should be considered in awarding the punishment."

Culpable homicide by causing the death of a person other than the person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable

homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Where a charge of murder depends upon circumstantial evidence, it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion.—*Hodge's Case*, 2 Lewin, C. C., 227. On the trial of an indictment for murder, the death of the person charged to have been killed may be collected from the circumstances, if incapable of being proved by other evidence; as where the deceased was thrown overboard into the sea, and never heard of afterwards.—*R.* v. *Hindmarsh*, 2 Leach, C. C., 569.

It is not necessary that the dead body should be found before there can be a conviction for murder.—13 B. L. R., App., 23; 3 W. R., Cr., 1; 7 W. R., Cr., 14.

The appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds, which resulted in the death of one person. *Held*, *per* Jackson, J., that such conduct raises an inference that he intended to cause death. *Per* Ainslie, J., that though he probably did not see how his blows were directed, as he struck them with a deadly weapon, regardless of consequences, he must have known that his act is imminently dangerous; that it must, in all probability, cause such bodily injury as was likely to cause death. *Per* Cunningham, J., that the offence was culpable homicide and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder.—2 C. L. R., 211.

The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.—1. L. R., 3 All., 383.

If a murder is committed in a jungle, wild beasts may eat up the body before it is found.

Punishment for murder by a life-convict.

303. Whoever being under sentence of transportation for life commits murder shall be punished with death.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which

may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

A snake-charmer exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators; the spectator tried to push off the snake, was bitten, and died in consequence. *Held*, that the act was done with the knowledge that it was likely to cause death, but without the intention of causing death, and therefore the snake-charmer was guilty under s. 304, and not merely of causing death by a rash act under s. 304A.—I. L. R., 5 Calc., 351.

If a man intentionally commits an offence against the person, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character.—I. L. R., 4 Calc., 764. The case of *Nidamarta Nagabhusaram* (7 Mad. H. C. R., 119) was cited and approved. In the above case the prisoner had kicked his wife, a girl of eight or nine years of age, on the back, with his bare foot. The child fell down and died almost immediately. From the medical evidence it appeared that the girl was quite healthy, and that she had died from rupture of the anterior coat of the stomach caused by external violence. The Judge convicted the prisoner under s. 304A, as he was of opinion that the prisoner had no intention to cause death, and had not the knowledge that the act was likely to cause death, and sentenced him to one year's rigorous imprisonment. The High Court convicted under s. 304, and passed sentence of five years' imprisonment. They remarked as follows:—"In judging of knowledge had by the accused, we must consider the circumstances: the blow that to one person, or under ordinary circumstances, may not, in the ordinary course of nature, be likely to cause death, may yet be imminently dangerous to another, or under special circumstances. To kick a girl of tender age with such force as to produce rupture of the abdomen in a healthy subject, appears to us to be an act of such a character that no resonable man could be ignorant of the likelihood of its causing death."

In his charge to the jury, the Judge should draw a distinction between the two classes of culpable homicide mentioned in s. 304, and direct them to find specially under which, if either, the prisoner is guilty.—B. L. R., 6 App., 86.

When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—2 W. R., Cr., 39. In this case it was proved that the prisoner struck a blow in retaliation with a light bamboo stick, not more than an inch in diame-

ter, and that the blow was aimed not at the head but at the side. The deceased was suffering from diseased spleen. In other cases it has been held there should be a conviction for hurt.

Causing death by negligence.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Act XXVII of 1870.]

Section 304A does not apply to cases in which there is either the intention or the knowledge of likelihood contemplated in ss. 299 and 300.—I. L. R., 5 Calc., 351 ; 3 All., 776. Instances of liability under this section are those of the owners of mischievous animals, of persons navigating vessels, in charge of steam engines, of physicians, of persons making or keeping gunpowder contrary to law. See American and English cases collected under this section in my "Comparative Criminal Jurisprudence." Dr. Wharton also enumerates the use of dangerous things, dropping things on roads, riding and driving, care of children, &c., dangerous machinery, athletic sports.

The word 'act' in this section and also in ss. 336, 337, 338, includes illegal omission. The *causa causans* should ordinarily be distinguished from the *causa sine quâ non*, though there are some cases where the original cause continues to be the dominant cause through a variety of intermediate events.

In India, there is much diversity in the application of s. 304A, and there are various decisions which show that even the highest Courts have failed to grasp clearly the distinction between negligent and excusable homicide. The Louisiana Penal Code contains an exceedingly lucid exposition of the *ratio decidendi* in these cases, and the following extract from my "Comparative Criminal Jurisprudence" may be found of much service by Judicial Officers in India. Negligent homicide is classed as :

1. Negligent homicide in the performance of lawful acts (*a*) in the first degree, (*b*) in the second degree.
2. Negligent homicide in the performance of unlawful acts.

As to the first class, want of due precaution is an element of both sub-heads : but in *the first, the danger of causing death must not be, and in the second it must be, apparent.* Imprisonment in the first case, two months to one year ; and in the second case, two to four years. The want of care and precaution distinguishes negligent from excusable homicide, and places it in the first or incipient degree of culpability. Example—when death is casually inflicted by the discharge of fire-arms which are believed not to be loaded, *without examining whether they are so or not*, it constitutes the offence. As to apparent risk, the common case of a workman throwing materials from the roof of a house is an example. The criminality of the homicide depends on the circumstance of the *place* in which the act is done. If in the country, or other unfrequented place, without previous inquiry or examination whether anyone be in the way, it is ranked as negligent homicide of first degree (risk not apparent) ; if in the streets of a populous city, without the precautions required by this Code, it is negligent homicide in the second degree (risk apparent).

As to the second class, negligent homicide in the performance of unlawful acts, one-fifth is added to the punishment if the act be an injury; one-fourth, if it be a misdemeanour other than an offence against the person; one half, if an offence against the person (except murder); punishment to be doubled, if it be a crime punishable with hard labour for less than life, and so on.

Negligence implies a want of wilful intention. It consists in the absence of a specific intention to injure, but in the presence of a reckless or careless disposition as to whether the act was likely to do injury or not, or at least in the absence of a general knowledge such as a reasonable person would have that the act was dangerous, and yet where no precaution to guard against that danger was taken.

This section does not apply to a case in which there has been the voluntary commission of an offence against the person.—*Khiran Nemiya*, unreported case, 3rd September, 1877; I. L. R., 2 All., 522, 766; 3 All., 597, 776.

Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased,—*Held*, that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.—I. L. R., 4 Calc., 815.

In the course of a trivial dispute accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two and a half cubits. In falling, deceased fractured his big toe, from which tetanus resulted, causing death five days afterwards. *Held*, that the accused was not guilty under this section, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *à fortiori*, no design for causing it. The case was simply one of using criminal force as defined in the Penal Code. By the law of England, however, the act would have been treated as manslaughter.—I. L. R., 1 Mad., 224.

It will be seen that the ruling at I. L. R., 4 Calc., 815, is based on a misapprehension. This section is probably not intended to apply to any case in which a blow, however slight, is *intentionally* given. Such a blow falls under s. 321 or 322, and circumstances may make it culpable homicide.

An accused, shown to have been guilty of negligence, cannot escape on the ground that the deceased has in part contributed to his own death by his own negligence. See I. L. R., 6 All., 248; Russell on Crimes (4th Ed., Vol. I, pp. 870, 871); *Reg.* v. *Longbottom*, 3 Cox, C. C., 439; *Reg.* v. *Swindall*, 2 C. and K., 230; *Reg.* v. *Williamson*, 1 Cox, C. C., 97. In the last case a boat overloaded with passengers had upset; if the passengers had remained seated, the accident would not have happened.

A man who, having a horse, which he knows to be vicious and dangerous, turns it out upon a common, through which, to his knowledge, pass much frequented public footpaths, which are not fenced off, is guilty of culpable negligence, and if the horse kills any one passing over the common, he may be convicted of manslaughter.—*R.* v. *Dant*, 10 Cox, C. C., 102. See also ss. 289 and 336 (not necessary that grievous

hurt should actually be caused). If hurt or grievous hurt be actually caused, ss. 337, 338 apply.

Contributory negligence is not an answer to a criminal charge, as it is to a civil action.—*R.* v. *Kew*, 12 Cox, C. C., 355.

A lad, as a frolic, without any intention to do any harm to any one, took the trap stick out of the front part of a cart, in consequence of which it was upset, and the carman, who was in it, putting in a sack of potatoes, was pitched backwards on the stones and killed. *Held*, that the lad was guilty of manslaughter.—*R.* v. *Sullivan*, 7 C. and P., 641.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death. [Act XXVII of 1870.]

Illustrations.

(*a.*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b.*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the

offence defined in this section: and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(*d*.) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table, A has committed the offence defined in this section.

See notes under s. 511, *infra*.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z. under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder, A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, *or with fine, or with both.*

As amended by Act VIII of 1882. s. 7.

Held, no attempt, where a woman ran towards a well with the intention of committing suicide. and was caught before she got there.—I. L R., 8 Mad.. 5. It was *held*, that there was still a *locus pœnitentiæ*, and that the woman might have changed her mind before jumping.

It is not uncommon in this country for a corrupt wife to pretend to hang or drown herself in order to frighten her husband. and thus get something out of him or to prevent him from interfering with her liberty of action. In China, such an act is commonly punished. Magistrates in this country generally acquit the woman altogether, when they find the case does not fall under s. 309; but they might consider also whether an offence has not been committed under s. 503, or, if the object to be to extort money, under s. 387, Penal Code.

Thug.

310. Whoever at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing, by means of or accompanied with murder. is a thug.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Punishment.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Causing miscarriage.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

Held, in Massachusetts, that it is not necessary to prove that the woman was really pregnant.—*Commonwealth* v. *Taylor*, 132 Mass., 261. But *contra*, see 15 W. R., Cr., 4.

Attempts to cause miscarriage are punishable under this section and s. 511. *Held*, in New Jersey, that the thing administered or prescribed must be noxious in its nature; but it is not necessary to prove that it will produce the desired effect —43 N. J. L., 86. The general opinion among the ancients was that abortion was no offence In Greece, Aristotle advised, that abortion should be enforced by law, when population had exceeded certain assigned limits. In Formosa, where males were prohibited from marrying before 40, and females before 36, if a female under that age was pregnant, she was by order of the Magistrate obliged to submit to abortion. But the Christian writers denounced the practice as a crime.

The terrible evils of espionage in offences of this sort, the scandal attending inquiry, the opportunities for corruption extortion, the possibility of suicides and even murders, from motives of shame and disgrace, are evils which outweigh the offence itself. It should be noted that of all these sections, only ss. 317 and 318 are cognizable. But in spite of this precaution of the Law Commissioners against oppression, the Police (especially the Village Police) not infrequently cause much harm by their illegal interference. Sections 149, 150, 151, Criminal Procedure Code, allow interposition only for the prevention of *cognizable* offences. Chokidars should not be permitted to drag widows to the thana to report themselves in the family way, or to inform the Police that such widows are going to commit abortion. Immense evil is caused by allowing these men to act as self-constituted custodians and censors of the village morals. These evils are worst in Orissa, and are a relic of the oppressive rule of the Maharattas. Magistrates are not empowered by law to issue writs *de ventre inspiciendo*.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by an act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If act done without woman's consent.

And if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent a child being born alive, or to cause it to die after birth.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

See English cases collected under this section in my "Comparative Criminal Jurisprudence."

Causing death of a quick unborn child by an act amounting to culpable homicide.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount

to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

This section refers to a quick unborn child. Where a child *has been born*, and has an independent circulation of the blood, even though the umbilical cord be not severed, so as to fulfil the description of a living human being, the killing of such child is murder.—*R.* v. *Enoch*, 5 C. and P., 539; *R.* v. *Wright*, 9 C. and P., 754.

Exposure and abandonment of a child under twelve years by parent or person having care of it.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide as the case may be, if the child die in consequence of the exposure.

"If the child die in consequence of the exposure." In a certain case the High Court interpreted these words to mean "dies from cold or some other result of exposure," and not to refer to deaths which may possibly have resulted afterwards from a deprivation of natural, and a substitution of artificial, sustenance.—10 W. R., Cr., 52.

This section was intended to prevent the desertion or abandonment of children of tender years in such a manner that the children abandoned thereby run the risk of dying or of being injured. The section implies that children left without any protection are the objects of its provision: and not children left in a house where there are other relatives to protect them.—16 W R., Cr., 12.

The limit of age in New York is six years. In England, unlawful abandonment or exposure of a child under two years, whereby its life is endangered, or health is or is likely to be permanently injured, is punishable with five years' penal servitude The exposure of children was the prevailing and stubborn vice of antiquity, and was only eradicated by the Christian religion and capital punishment. It was made a capital offence in 374 A. D. by Valentenian; and in 529 Justinian decreed, that the father lost all legitimate authority over the child by exposing it. See American, French, Belgian, and German law in my "Comparative Criminal Jurisprudence."

In England, everyone who unlawfully abandons or exposes any child *under the age of two years*, whereby the life of such child is endangered, or its health has been, or is likely to be, permanently injured, is liable to five years' penal servitude.—24 and 25 Vict., c. 100, s. 27.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally con-

ceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See English cases collected under this section in my "Comparative Criminal Jurisprudence." The wording of the Indian law appears to contemplate the death of the child *soon* after birth. The New York Penal Code, s. 318, makes punishable. "every person who endeavours to conceal the still birth of any child, which, if born alive, *would be a bastard*, or the death of any such child under the age of two years."

A person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old.—3 Mad. H. C. Rep., Ap., 63; and 6 Cox, C. C., 389; but *contra*, 9 Cox, C. C., 506, *per* Martin, B.

Under the English law, the term 'child' does not include the delivery of a 'fœtus,' which has not reached the period at which it might be born alive.—24 & 25 Vict., c. 100, s. 60.

The words 'secret disposition' of the body include cases in which the body is placed in a situation where it is not likely to be found except by accident or on search.

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

A blow with an umbrella across the chest amounts to hurt, although the pain may be slight. In such a case, where the Magistrate convicted of hurt, and the Sessions Judge reduced the conviction to simple assault, the High Court restored the conviction and sentence for hurt.—24 W. R., Cr., 67.

Grievous hurt.

320. The following kinds of hurt only are designated as 'grievous':—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

When a man strikes a woman with a child in her arms on that part of her person which is close to the head of the child, it must be presumed that he knew that he was likely to strike the child and endanger its life. Such an act amounts to voluntarily causing grievous hurt to the child, though it may not have been the intention of the person to strike the child.—2 C. L. R., 304.

Where a person killed another by throwing a piece of brick at him, it was held to be hurt, and not the offence of causing death by a rash or negligent act.—I. L. R., 3 All., 597. See also I. L. R., 3 All., 776; 2 All, 522, 766.

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow, which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt

323. Whoever, except in the case provided for by Section 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

The prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down, slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the

spleen, and that death was caused by the rupture of the spleen. *Held*, under the circumstances, that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.—5 W. R., Cr., 97.

In England, moderate chastisement may be lawfully inflicted upon a child by its parent, and on a pupil or apprentice by its master, subject in all cases to the non-infliction of any permanent injury. The civil law gave the husband a large authority over his wife, allowing him, for some misdemeanors, *flagellis et fustibus acriter verberare uxorem*; for others, only *modicam castigationem adhibere*) But from the time of Charles the Second, a wife may have security of the peace against her husband—Stephen's Commentaries, Vol. II, p. 284.

Voluntarily causing hurt by dangerous weapon or means.

324. Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Where death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session, on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt is contrary to law.—1 C. L. R., 141.

Other rulings, as well as circulars, state that a Magistrate is not bound to commit. Magistrates are merely enjoined to be careful how they take it upon themselves to decide cases in which death has been caused.

Voluntarily causing grievous hurt by dangerous weapon or means.

326. Whoever, except in the case provided by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or

by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Note that this section is not bailable, and that it is necessary to award a sentence of imprisonment.

The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the grievous hurt, whether at the instant, or long after the husband found himself dishonoured.—4 W. R., Cr., 17.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c., with intent to commit an offence.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

'Other thing' means unwholesome thing, and does not include the administration of some aphrodisiacal substance in order to excite sexual desire.—1 W. R., Cr., 7. Would such an act be punishable as hurt?

If life is endangered by the administering of the drug, the sentence may be transportation for life under s. 326.—4 W. R., Cr., 4.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer

or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a.*) A, a Police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b.*) A, a Police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c.*) A, a Revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d.*) A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this section.

'Misconduct.' It is not necessary that the misconduct should amount to a punishable offence, nor is it necessary that any offence or misconduct should actually have been committed. A zemindar sends for A, and orders him to be beaten, in order to make him confess that he has an illicit intrigue with B, a widow in the village. A zemindar demands a fine from A on the ground that some female relative of his has caused abortion, and beats him in order to compel the payment of the fine. These acts are offences under the section See 20 W. R., Cr., 43.

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to

restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person

other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisoes as Exception 1, Section 300.

As amended by Act VIII of 1882, s. 8.

The deceased, at dead of night, for the purpose of having criminal intercourse with prisoner's wife, entered a dark room where prisoner and his wife were sleeping separately. The prisoner, by a single blow with a deadly weapon, killed the deceased. The Sessions Judge convicted the prisoner under s. 304. The High Court convicted under s. 335, and sentenced to one year's rigorous imprisonment.—3 W. R., Cr., 55.

Punishment for act which endangers life or the personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

See notes under s. 304A, *supra*.

Causing hurt by an act which endangers life or the personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt by an act which endangers life or the personal safety of others.

338. Whoever causes grievous hurt to any person by doing an act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

Wrongful restraint.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water, which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Illustrations.

(*a.*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b.*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the buildings. A wrongfully confines Z.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

The retaining of a person in a particular place, or the compelling him to go in a particular direction, by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will.

The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty, without malice, will not be sufficient to sustain an action.—2 Mad. H. C. Rep., 396. See also case of *Linford* v. *Fitzroy*, 13 Q. B., 240.

See note under s. 160, Criminal Procedure Code.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person for whose liberation a writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Where a woman is induced to remain in a place or certain places, and not forced, there is no wrongful confinement. Confinement must be actual, and not potential, and for a conviction under s. 346, it must be shewn that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered.—I. L. R., 9 Calc., 321.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

OF CRIMINAL FORCE AND ASSAULT.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion or change of motion or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it

to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z, by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has committed criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for using criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence,—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant,—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using criminal force to deter a public servant from discharge of his duty.

See s. 99, *supra*, and s. 235, Criminal Procedure Code. In India, there appears to be no right of private defence, even though the warrant be defective or unlawful, or though executed by an officer having no authority, provided the officer, in good faith, believes himself to be acting legally, and the person arrested knows that he is a Police-officer. The English law is different.

A Collectorate *piyadu*, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order, the prisoners attempting to deprive him of his perwana. *Held*, that they were rightly convicted under s. 353.—13 W. R., Cr., 49.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Also punishable with whipping on second conviction. Act VI of 1864.]

Assault or use of criminal force to a woman with intent to outrage her modesty.

When the evidence is not sufficient to prove rape or an attempt to rape, there may be a conviction under this section. An indecent assault on a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance. Where the Bombay High Court were not so satisfied, they altered a conviction for attempt to commit rape to one under this section, and sentenced the prisoner to two years' rigorous imprisonment. *Reg.* v. *Lloyd*, 7 Car. and Pay., 318, followed.—I. L. R., 5 Bomb., 403.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour a person otherwise than on grave provocation.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine person.

358. Whoever assaults or uses criminal force to any person, on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assaulting or using criminal force on grave provocation.

Explanation.—The last section is subject to the same explanation as section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping.

360. Whoever conveys any person beyond the limits of British India, without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

Explanation.—The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

The right of a Mahomedan woman to the guardianship of a female child ceases on her marrying again with a stranger (*ajnavi*), *i.e.*, one outside the prohibited degrees of consanguinity. To make this clearer, A marries B, the brother of her deceased husband; she retains the right of custody of her child, as B is the child's paternal uncle, and therefore could not marry the child. But on marriage with a stranger, the right of guardianship passes first to certain relations of the wife, and only in their default, to the husband's relations.

It is not necessary that the taking or enticing should be shown to have been by means of force or fraud. It is otherwise in the case of abduction.—2 W. R., Cr., 5, 7.

A child under ten years of age is, *primâ facie*, subject to guardianship, and any one removing such child without permission takes the risk of such act upon himself: the fact of having omitted to inquire whether the child had a guardian or not is no defence to a charge of kidnapping a minor from lawful guardianship.—I. L. R., 3 Bomb., 178.

In this case a girl of ten years of age was living with her husband and mother-in-law, and was sent out to collect and sell cow-dung cakes. As she was returning home, the accused detained her at his house and took her away, intending to go to a different place with her.

A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was *held*, that A was rightly convicted under ss. 109 and 363 of the Penal Code for abetting the offence of kidnapping.—I. L. R., 8 Calc., 969.

The mother of an illegitimate child is its proper and natural guardian during the period of nurture, and where the mother, on her deathbed, entrusts the care of such a child to a person, who accepts the trust and maintains the child, such a person is 'lawfully entrusted' with the care and custody of the minor within the meaning of s. 361.

The explanation of the words 'lawful guardian' is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor had been abducted was the guardian of such minor within the meaning of the legal acceptation of the word.—I. L. R., 8 Calc., 971.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A Magistrate convicted certain prisoners under this section, and the Judge referred the matter to the High Court, on the ground that the offence disclosed by the evidence would support a charge under s. 366, and that, therefore, the Magistrate should have committed. The High Court refused to interfere, as the offence under s. 363 was included in the graver offence under s. 366, and the prisoners had not been prejudiced. *Per* Maclean and Macpherson, JJ., on reference from Midnapore, 24th July 1882.

Where there is no taking, there can be no kidnapping.—10 W. R., Cr., 33. It will be seen that abduction *per se* is not an offence under the Code. It is only an offence when committed with one of the intents mentioned in ss. 364—369. Kidnapping from British India may be committed in respect of a person of any age; only minors and persons of unsound mind can be kidnapped from lawful guardianship.

"Out of the keeping of." It is only necessary to show that the child was still under the care or control of the parent or guardian. When a minor girl had run away from her father's house, and *afterwards* meeting defendant, a coolie agent, went away with him, *held*, no kidnapping.—4 W. R., Cr., 6.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*.) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting a woman to compel her marriage, &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

See s. 551, Criminal Procedure Code, which speaks of "unlawful detention of a woman or of a female child under the age of 14 years, *for any unlawful purpose*." The word 'unlawful' is wider than 'illegal.' See definition of 'wrongful loss.' 'Means,' in themselves 'lawful,' may be unlawful because of their tendency to injure others. See 6 W. R., Cr., 59. *Quære.*—A relative, who is not entitled to give a minor girl in marriage, kidnaps or abducts her for that purpose; is such purpose unlawful? This is somewhat common among Mussalmans, and also among those castes (*e. g.*, Athguria Brahmans in Orissa) who have to pay a high price for marriageable girls See I. L. R., 8 Calc., 969, where a man, who married a minor girl under such circumstances, without the consent of her father, was *held* to have abetted an offence under this section; and 3 W. R., Cr., 9, where the uncle of a minor was convicted.

Kidnapping under the Code is of two kinds only: (1) Kidnapping from British India; (2) Kidnapping from lawful guardianship. If the girl be over 16 years of age, abduction (s. 362) must be proved.

Where a woman, who was tired of her husband, willingly yielded to the solicitations of a procuress, and went of her own accord to Calcutta, the conviction of the procuress under this section was quashed.—1 W. R., Cr., 45.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement a kidnapped person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or know-

ledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years, with intent to steal moveable property from the person of such child.

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling of any minor for purposes of prostitution, &c.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Prisoners were convicted, the one of disposing of, and the other of receiving, two females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held*, that offences under ss. 372 and 373 had been committed.—5 Mad. H. C. Rep., 415.

The Court observed: "If the precepts of a particular religion enjoin acts which transgress the rules of penal law, these acts will clearly be offences. Where the Legislature intended that acts which would otherwise be offences should not be so because connected with religious observances, they have expressed that intention."—(Section 292, Penal Code.)

To constitute an offence under this section, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.—I. L. R., 1 Mad., 164 ; 6 Bom. H. C. Rep., C. C., 60. But Jackson, J., *held* otherwise.—6 B. L. R., App., 34.

Buying of any minor for purposes of prostitution.

373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The prisoner met a girl of eleven in a street, who, induced by the offer of a pice, willingly accompanied him into an uninhabited house close by and allowed him to have sexual intercourse with her. The girl had not attained the age of puberty, and the evidence tended to show that she had not before had sexual connexion. *Held*, that there was no offence under s. 373. It is necessary to show that complete possession and control of the minor's person was obtained by buying, hiring, or otherwise with the intent or knowledge that, by the effect of such possession and control, the minor should or would afterwards be employed or used, &c. This construction is rendered more certain by the correlative terms of s. 372. Moreover, the section does not apply to a single act of casual sexual intercourse, but to the "employment or use," of minors "for the purpose of prostitution."

Innes, J., remarked;—"Possession in the section means possession with a power of disposal, and in this sense there is no evidence that the prisoner had possession of the girl. I think that the section is directed against a trafficking in the prostitution of minors, and not against the buying, hiring, or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession."—5 Mad. H. C. Rep., 473.

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF RAPE.

Rape.

375. A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

See note under s. 354, *supra*, and s. 90.

In Bengal, rapes by one man do not appear to be common. But a combination of two or more men to commit a rape is commoner than is supposed. Such cases are often thrown out on the ground of the woman's being corrupt. But this very corruption is generally the leading motive for the rape. It may become known that a widow in a village has bestowed her favours on some man, and she is consequently exposed to the solicitations of others. Their solicitations are refused, they combine together to rape, or at least to outrage, her. It sometimes happens that dacoities are suppressed, which were not dacoities at all, but in which the entry was merely due to the determination to violate some female in the house. This is not uncommon in Burmah. European Magistrates are too ready to jump to the conclusion that every charge under s. 354 or 377 is only a case of detected illicit intercourse, and that a charge is made merely "*ijjat bachane ke waste.*" Many a woman is consequently refused that protection which the Courts are bound to give her. Such women may, in a majority of instances, be more or less corrupt, chiefly more perhaps; but even a harlot can bestow her favours on whom she pleases. I remember a case in which a Bench, presided over by a Deputy Magistrate, discharged a man who had forcibly entered a woman's house, and severely assaulted her in consequence of her refusal to have connection with him, *on the ground that she was of loose character!* The defence of the accused was, of course, that he had been visiting the woman for some time past. On the re-institution of the case, this defence was proved to be false. On the other hand, it was conclusively shown that the man had, for some time past, been soliciting the woman without success, and had, in consequence, threatened her. In the present state of Bengalee society a woman is free from active molestation, if known to be virtuous. But if she is known to have been corrupt with one man, she is exposed to outrage from a dozen others. Common methods of revenge for refusal of solicitations are to sing indecent songs in her hearing, to throw cowbones or excrement into her *angun*, or to burn her house down; and many a woman, after going from one *kacha* house to another, is at last compelled to seek immunity in a brick-house. Bengalees will even risk a charge of house-trespass in order to bring shame and disgrace on a woman who has refused their solicitations. They will enter the house, refuse

to leave it, and purposely create a disturbance, their defence, when prosecuted, of course, being the stereotyped one, that they went at the invitation of the woman. At the same time there are, of course, some cases of alleged rape, which are merely cases of a detected intrigue, in which the woman is compelled by her male relatives to institute a charge.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

OF UNNATURAL OFFENCES.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

See note under s. 222, Criminal Procedure Code.

In these cases it is usual to make the *pathicus* a witness, though he might be prosecuted for abetment.

To constitute the offence of sodomy, the act must be in that part where sodomy is usually committed; the act in a child's mouth does not constitute the offence.—*R.* v. *Jacobs*, R. and R., C. C., 331.

Where an adult and a boy of twelve years of age commit an unnatural offence, the boy being the actual *cinædus*, the adult being the pathic (*pathicus*) may be convicted (of abetment?)—*R.* v. *Allen*, 3 Cox, C. C., 270.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession, it could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from

the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

To constitute theft it is sufficient if property is removed, against his wish, from the custody of a person who has an apparent title, or even a colour of right, to such property.—I. L. R., 9 Bomb., 135, following case of *Cape* v. *Scott*, L. R., 9 Q. B., 269. See notes under s. 424, *infra;* also s. 441.

As to whether water can be stolen, see the case of *Ferens* v. *O'Brien*, (11 Q. B. D., 21). The appellants were owners of a mine, which was supplied with water by a company by underground pipes, in which were taps for the use of the appellant's servants, who paid a fixed price for using the water. The respondent drew the water from one of the taps, without paying for it. The Magistrate dismissed the information, subject to a special case for the opinion of the Queen's Bench. The Court (Field, J., and Mathew, J.) gave judgment for the appellants. "Water in a stream or pool is *publici juris;* but, when enclosed in a pipe and severed from the realty, it becomes private property, and may be the subject of larceny. The case must be remitted to the Magistrate to be heard on its merits." See cases quoted under this section in my "Comparative Criminal Jurisprudence."

In I. L. R., 7 Mad.. 557, the Court remarked: "Assuming that there was a possession, even jointly with the accused, by the prosecutor, and that the accused removed the property dishonestly within the meaning of that term in the Penal Code, the removal would constitute theft. But see note under s. 424, *infra*.

In a paddy-cutting case it was remarked by the High Court: "A mere plea by the accused that the property, with the theft of which he is charged, is his own property, unsupported by proof, or by circumstances which indicate that there is some truth in his statement, is not sufficient to entitle him to a discharge."—7 B. L. R., App., 55.

The mere assertion of a claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be *proved* by evidence to be fair and good.—15 W. R., 47.

A boat may be the subject of theft, although under s. 442 it is for certain purposes classed with houses.—16 W. R., Cr., 63.

Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft, if that consent was unauthorized or fraudulent.—I. L. R., 1 Bom., 610.

The Court referred to ss. 11 and 27, Penal Code,—"The possession of the Inspector was the possession of Government, and a consent, which he was not authorized to give, cannot be construed in favour of the accomplice of his breach of trust into the consent of Government."

A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it; but he did not treat such property as joint family property, but as his own property. *Held*, that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it.—I. L. R., 3 All, 181.

Straight, J., said:—"I am by no means prepared to say that, under certain circumstances and facts, it might not be competent to charge one member of an undivided Hindu family with theft or criminal misappropriation of family property; but the consideration of this question does not arise in the present case, in which, whatever may be the presumption as to Tunsi and Dalmir being members of a joint Hindu family, the evidence entirely negatives any such presumption."

A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, *held*,—that as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed. But A was held guilty under expl. 4 of s. 108, Penal Code, the abetment of an abetment being an offence, though the offence itself be not committed.—I. L. R., 4 Calc., 366.

See Appendix.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three

years, or with fine, or with both. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

As to value of property stolen, identification, hunger-thefts, and recent possession of stolen property, see dissertation and case-law of other countries under s. 378 in my "Comparative Criminal Jurisprudence."

Things valuable to no one but the owner are capable of being stolen. See Stephen's Digest. pp. 286—294. The thing must have "some assignable value." (Louis. P. C., 645.) In *R.* v. *Bingley*, the property taken was a slip of paper containing a memorandum of a debt due to the person robbed. *Held*, the offence was robbery; the prosecutor showed, by carrying the memorandum in his pocket, that he considered it of some value. See s. 477, *infra*.

Theft in dwelling-house, &c.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Theft by clerk or servant of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

A hired boatman is not a clerk or servant within the meaning of this section. Theft by such a person on board a boat comes under s. 380.—8 W. R., Cr., 32.

A servant who is in charge of his master's clothes, and steals a coat, is guilty under this section. See s. 27, *supra*. See under s. 409, *infra*.

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death or hurt or restraint, or fear of death or of hurt or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous

imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Illustrations.

(*a.*) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z, in case Z should resist. A has committed the offence defined in this section.

(*b.*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

OF EXTORTION.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits 'extortion.'

Illustrations.

(*a.*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

A constable told some shop-keepers and traders that an order had gone forth that they were to be taxed in small sums of four annas and eight annas per head. They fell into the trap and paid the constable certain sums. *Held*, that the offence was cheating and not extortion, as it was more in consequence of their credulity than in consequence of any personal fear that they parted with their pice.—4 W. R., Cr., 5.

I think the Court might have held there was no extortion, on the ground of there being no fear of *injury*, which is harm illegally caused (see s. 44). The imposition of a tax by Government would not be 'injury.'

So, where persons taking cattle to the pound, took money from the owners under a threat that they would otherwise impound, *held*, no extortion, as the accused did not threaten *injury*, but an act that they were lawfully empowered to do. The delivery of the property must be a direct consequence of the fear of injury.

The tenor of a criminal charge is a fear of injury within the meaning of those words in s. 383. See ss. 388, 389. Extortion may be equally committed whether the charge threatened is true or false.—7 W. R., Cr., 28.

Where it is doubtful whether the money was obtained by fraud or fear of injury, there may be a conviction in the alternative for cheating or extortion.—3 W. R., Cr., 32.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt in order to commit extortion.

387. Whoever, in order to the committing of extortion puts or attempts to put any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of

having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Section 377, may be punished with transportation for life. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

It has been held in numerous cases in England, that it is immaterial whether the person threatened has or has not committed any offence, and also that it is not necessary that the offender should threaten to make the accusation before a Court competent to deal with it. A threat to make the accusation before any person is sufficient.

Putting person in fear of accusation of offence in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under Section 377, may be punished with transportation for life. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

OF ROBBERY AND DACOITY.

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.

Theft is 'robbery,' if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery.

Extortion is 'robbery,' if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of

instant wrongful restraint to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child, who is there present. A has therefore committed robbery on Z.

(*d.*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees. This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Where a person through fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence is robbery and not extortion.

If hurt is caused in snatching away an ornament, the offence is robbery.—5 W. R., Cr., 95.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit 'dacoity.'

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. [Also punishable with whipping on second conviction. Act VI of 1864.]

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1684.]

When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance, does not take that offence out of the purview of s. 395. It is sufficient that the robbers cause, or attempt to cause, the fear of instant hurt or of instant wrongful restraint.—7 W. R., Cr., 53.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to a wandering gang of thieves.

See the Criminal Tribes Act.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

If the common object of the assembly be to commit any other offence, it may be an unlawful assembly under s. 141, *supra*.

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment

Dishonest misappropriation of property.

of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A takes property belonging to Z out of Z's possession, in good faith believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c.*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if at the time of appro-

priating it he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations.

(*a.*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b.*) A finds a letter on the road containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c.*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e.*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

See provisions of Treasure Trove Act. VI of 1878. In a recent case in England, where a man, asked by another to lend him a shilling, gave him a sovereign by mistake, and the latter refused to return it, held by seven Judges to be larceny, and by seven others not to be larceny. It would amount to criminal misappropriation of nineteen shillings under the Indian law. The offence would be complete when the recipient, discovering the mistake, determines to appropriate the money.

There can be no criminal misappropriation in respect of a thing which has been abandoned by its owner. For instance, *Mochers* cannot be convicted for taking the hides of cattle thrown away on the village "bhagars," even supposing they enjoy no easement to do so.

It has been held by Straight, J., that a sacred bull let loose by its owner is no longer "property," and therefore cannot be the subject of a conviction under s. 411, Penal Code.—I. L. R., 8 All., 51.

These bulls sometimes do great damage to crops. In such a case they should be impounded. If an owner claims them, he can be prosecuted under s. 268, Penal Code or (if the circumstances justify it), s. 289, Penal Code. If there is no claimant, the animal is sold. In several Municipalities, these bulls have long been utilized for dragging the conservancy carts. Superficial knowledge of the country and the people sometimes prevents officers from taking action which is not only justifiable but incumbent on them. There is a right of private defence of property against *persons*. Is there no such right against animals, which are "*nullius proprietas*" or "*ferœ naturæ*"? In my "Comparative Criminal Jurisprudence" I have quoted some American rulings, showing that a man is justified in shooting animals (not wild animals) which persistently trespass on his land.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

It is not necessary that the accused should misappropriate to his own use.—12 W. R., Cr., 39; 11 W. R., Cr., 1.

OF CRIMINAL BREACH OF TRUST.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a.*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A. with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust

(*d.*) But if A, in the last illustration. not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in

the Bank of Bengal, disobey's Z's directions and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*.) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*.) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

See 1 B. L. R., 21. The prisoner was in the employment of Messrs. Watson as a gomasta, and in that capacity was entrusted with sums of money aggregating Rs. 600. He did not supply the wood, and when called upon to account for the money, falsely stated that he had purchased wood from various parties, though it is proved that he had not purchased a stick from any of them. The Joint Magistrate convicted the prisoner, and on appeal the Judge acquitted him. The High Court *held*, that the Joint Magistrate had properly convicted under s. 408, Penal Code, and restored his order. The judgment of the Court was delivered by Glover, J.—"We think the view taken by the Judge in this case is incorrect. He holds that the prisoner has merely failed to account satisfactorily for sums received; and that this failure to account does not establish a charge of embezzlement; and in support of his view he has quoted the case of a clerk on a mail-coach establishment reported in Roscoe's Digest, who, when charged with embezzlement for not entering in account and remitting to his employers money received for passengers and parcels, was held not to be guilty of embezzlement, but only of default of payment. If the prisoner regularly admits 'the receipt of the money, the mere fact of not paying it over is not a felony, it is only a matter of account.' Had the Judge gone a little further in Roscoe, he would have found these words: 'In general the act of embezzlement cannot be said to take place until the party who has received the money refuses to account for it, or *falsely* accounts for it.' The facts in the present case are patent. The prisoner admits that he received money from the complainant to procure wood for the use of the factory. He has not supplied wood, and he has attempted falsely to account for the expenditure of the money advanced to him, and the parties to whom he says he paid money and from whom he purchased wood, deny the transaction, and it is not said that their evidence is not worthy of credit."

The ordinary criminal law is not excluded by Reg. VII of 1817 or Act XX of 1863, relating to criminal breach of trust by trustees of temples.—I. L. R., 1 Mad., 55.

A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of an offence under s. 405, Penal Code. The Full Bench remarked: "If it be made out by the evidence that one partner was entrusted by his co-partners with property or with a dominion over it, and that he had dishonestly misappropriated it, or dishonestly used it in violation of the mode in which his trust was to be discharged, or of the agreement between the parties as to the use he was to make of the property, he ought to be tried for criminal breach

of trust. I therefore think we should say that the decision *In the matter of the Petition of Lall Chand Roy* (9 W. R., Cr., 37) cannot be supported.—13 B. L. R., 307; 21 W. R., 59.

Where the prosecutor gave the prisoner time to make out his accounts and pay the balance due, and the prisoner subsequently absconded without having made good the deficit,—*held*, that the fact of giving time did not vitiate the conviction, or show that the matter was one for the Civil Court only.—5 W. R., Cr., 56.

A constable who dishonestly misappropriates pay of other constables entrusted to him is guilty of criminal breach of trust.—3 W. R., Cr., 44.

Where a person was in charge of salt golahs from 1861 to 1865, proof of a large deficiency of salt without distinct proof of misappropriation was held to be insufficient for a conviction.—5 W. R., Cr., 21.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, &c.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A ryot owes his landlord Rs. 100 on a decree for arrears of rent with interest and costs. The ryot, believing the gomasta's statement that Rs. 125 is due, pays that amount. The gomasta misappropriates the Rs. 25, and pays Rs. 100 to his master. The gomasta is guilty of cheating. But inasmuch as the ryot entrusted him with the money in order that it might be paid to the zemindar, the gomasta is also guilty of criminal breach of trust.—See 8 W. R., Cr., 1.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transport-

ation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury Buildings, over which they, as burkandazes, were placed on guard. and were convicted under s. 409. *Held*, that the charge should have been under s. 381, Penal Code —2 W. R., Cr., 55.

Section 409 does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps with the knowledge and sanction of his superiors to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, when he made away with the stamps.—13 W. R., Cr., 77. But see 8 W. R., Cr., 1.

Money received by a mohurir appointed under the Registration Act, by way of fees for registering deeds, is money entrusted to him as a public servant.—20 W. R., Cr., 49.

To constitute an offence under s. 409 it is not necessary that the property should be that of Government, but only that it should have been entrusted to a public servant in that capacity.—2 C. L. R., 515.

OF THE RECEIVING OF STOLEN PROPERTY.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the criminal breach of trust has been committed, is designated as 'stolen property' *whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.* But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

As amended by Act VIII of 1882, s. 9. "Whether the transfer has been made . . . . within or without British India." See I. L. R., 1 Bom., 50; 6 Calc., 307; 5 Bom., 338.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Offence of dishonest retention of stolen property may be complete without any guilty knowledge at the time of receipt.—3 Mad. H. C. Rep., Ap., 42.

The fact that a child has been tried for theft, and discharged on the ground of want of understanding within the meaning of s. 83 of the Penal Code, is no bar to the conviction of a person charged under s. 411 with receiving the property alleged to have been stolen. — I. L. R., 6 Mad., 373.

Where circumstances raise the presumption that the property is stolen, it is for the accused to rebut such presumption.—I. L. R., 6 All., 224. So far this ruling is sound; but in the course of his judgment, the Judge remarked :—" There is nothing to show either the time when, or place where, the theft took place, or the circumstances under which it occurred, or who committed it." The accused was in possession of a stolen handkerchief and *could not account for its possession.* The Judge held that this was suspicious only, and that accused was not bound to prove how he got the handkerchief. The handkerchiefs stolen were in a box, which was placed in the guard's van, and accused was the guard. When the owner got to the end of his journey, he missed the handkerchiefs. About a month later, accused was found in possession of one of the handkerchiefs. On these facts it is impossible to approve of the Judge's ruling. There was everything to show the time and place of the theft and the circumstances under which it occurred, and who committed it. Had the Judge been acquainted with the decisions of learned English Judges *in simili materiâ*, his exposition of the law could not have been so unsound. In the case of *R.* v. *Burton* (Dear., 282) accused, with his pockets full of pepper, was seen coming out of a lower room in a warehouse in the London Docks, in the floor above which a quantity of pepper was deposited, some being loose on the floor. Maule, J., remarked :—" If a man go into the London Docks sober, without means of getting drunk, and comes out of one of the cellars very drunk, wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed. It is not necessary that stolen property should be absolutely identified, provided the *corpus delicti* is established." A man may steal a fowl and eat it. A man is found coming out of a large forest with a sal log. The burden of rebutting the inference of theft is on him, though it might be impossible to find or ascertain the exact tree from which the log had been cut. " The inference that property alleged to have been stolen has in fact been stolen may be drawn from other facts than the fact that it is identified by a witness."—Stephen's Digest, 308.

Where goods are dishonestly received by a wife or servant, in the husband's or master's absence, the latter does not become a receiver only by acquiring a guilty knowledge of such receipt, and passively acquiescing therein, but he does become a receiver with a guilty knowledge, if, having such knowledge, he does any act approving of the receipt of the goods. See cases quoted in my " Comparative Criminal Jurisprudence."—See Stephen's Digest, 353.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly recieves from a person whom he knows or has reason to believe to

belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Where a dacoity occurred, and accused was found in possession of part of the stolen property eight days afterwards, it was held that he might be charged with dacoity as well as with receiving.—5 W. R., Cr., 66.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Convictions under s. 411 are evidence to prove an offence under this section.—I. L. R., 8 Calc., 634.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

See I. L. R., 6 Bom., 402.

OF CHEATING.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat.'

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A. by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A. by exhibiting to Z a false sample of an article. intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it A cheats.

(*g.*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money. intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it. he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i.*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property. sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

In England, the false pretence must be of an existing fact. and not merely a promise to perform some act in the future, unless such promise is based upon or implies an existing fact falsely alleged to exist.

Example.—A private individual puts on the uniform of an Inspector of Police, and thereby obtains a sword-belt from the contractor. This is a false pretence by conduct.

A false pretence does not include such untrue commendation or untrue depreciation of an article which is to be sold as is usual between sellers and buyers, unless such untrue commendation or depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined.—Stephen's Digest, 330.

Examples.—A induces B to lend him money on certain spoons, which are, he says, of the best quality, and fully equal to Elkington's A quality. This is mere exaggeration, and not a false pretence.

A induces B to buy a chain by saying "It is fifteen carat gold, and you will see it stamped on every link; I gave £9 for it." Each link bore the mark 15ct., but was in fact imitation, and comparatively worthless. This a false pretence.

A obtains money from B by promising to marry her. and to furnish a house with the money, representing himself to be an unmarried man. A in fact is married. The representation that A was unmarried is a false pretence, though the promises based upon it would not have been

false pretences without it.—*R.* v. *Jennison*, L. & C., 157. As regards obtaining goods by false pretences, an intent to defraud is consistent with an intent to undo the effect of the fraud if the offender should be able to do so.—Stephen's Digest, 332. A, by false pretences, induces B to let him have some carpets, intending to pay for them if he should be able to do so. This is an intent to defraud.—*R.* v. *Naylor*, L. R., 1 C. C. R., 4. See law of other countries and case-law under this section in my "Comparative Criminal Jurisprudence."

It has been ruled by the Court of Cassation in Paris, that, if milk is distinctly sold *as pure milk*, the admixture of *any* quantity of water constitutes cheating.

The Indian law is much wider than the English law. Indeed, the wording may be made to cover cases which could scarcely be punished as criminal offences.

Defendant applied to the tehsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. *Held*, that he was properly convicted of cheating. Nothing was more likely to damage the reputation of the tehsildar with his immediate superiors than forwarding such an application, which, if complied with, would have resulted in a considerable loss of revenue to Government, and might have laid the tehsildar open to suspicion of having colluded with defendant to defraud the Government.—6 Mad. H C. Rep., Ap., 12.

The prisoner was indicted for obtaining £300 from A, upon the false pretence that his stock-in-trade was free from incumbrances. The prisoner was a draper, and A was employed by him as an assistant in his business. A, after consulting his father, offered the sum of £300, which the prisoner accepted. A then asked if the transaction was "all right," and the prisoner answered in the affirmative. A's father afterwards put the same question, and received a similar reply. A took possession of the stock, which was afterwards seized by B under a bill-of-sale executed by the prisoner before the sale to A. Two Judges thought the charge had been substantiated, but the majority of the Court quashed the conviction, remarking as follows: "The prosecutor had been in the employ of the prisoner, and it was quite consistent with the facts found that the former had acted upon his own belief. The prisoner's statement that it was "all right" was made *after the contract was complete*, and was not an inducement to the making of it. A warranty of title was implied in civil proceedings, *but it must be especially proved in a criminal prosecution*. Proof of moral fraud was not enough, and the prosecution had failed to prove a *distinct false pretence, acted upon by the prosecutor when he paid the money* to the prisoner. This was a case lately before the Court of Criminal Appeal in England.

Where the prisoner deceived the complainant by stating that a certain woman was a Brahman, whereas she was of a lower caste, and thereby induced the complainant to part with money and contract marriage with her,—*Held*, that the prisoner was guilty of cheating.—5 W. R., Cr., 98.

There must be actual deception. Where a person bought milk, knowing it was watered, in order to get up a case against the seller, it was held, that there had been no deception, and therefore no cheating.—18 W. R., Cr., 61.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

A vendor proceeded, in company with three persons, to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's office; one of them there personated the vendor and got the deed registered. She was convicted of cheating by false personation, and the other two of abetting that offence.

Held, on revision, that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 93 and 94, Act XX of 1866 (now s. 82 of Act III of 1877), and not under s. 419, Penal Code.—2 B. L. R., Ap. Cr., 25.

Where the accused represented to the prosecutor that a girl was a Brahman, and thereby induced him to part with his money on consideration of the marriage of the girl to his brother, when the girl was really of the Sudra caste, it was *held*, that he was guilty of cheating by false personation.—16 W. R., Cr., 43.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

418. Whoever cheats, with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing a delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See s. 206, *supra*.

Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available, according to law, for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge,

or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A removal of books to defraud co-partners is punishable under this section. The section is not confined to concealment with intent to defraud creditors. The Court remarked: "There is no reason why a man should not be criminally punished for defrauding his partner just as much as for defrauding his creditors; nor is there any reason why a man should not fraudulently remove the property of a partnership just as he may fraudulently remove the property which belongs to himself." — 13 B. L. R., 308, *note*.

In the above case the counsel for the prisoner referred to the case of *Queen* v. *Allah Bux*, in which it was held that a partner of a shop, who had seized some account books from the shop gomasta, was not guilty of theft. The Court remarked: "The case of *Queen* v. *Allah Bux* is quite distinguishable from the present case. In that case there was no charge under s. 424, nor any allusion to that section. All that the Chief Justice said was, that, if any offence had been committed, it was not theft."

OF MISCHIEF.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility or affects it injuriously, commits 'mischief.'

Explanation 1. — It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a.*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b.*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c.*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g.*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h.*) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Mere neglect on the part of an owner of cattle to keep them from straying is not causing cattle to enter a compound within the meaning of s. 425. The section requires an active causing.—6 B L. R., App., 3. See also I. L. R., 7 Bom., 126; 6 M. H. C. R., 36.

The tearing of a document may be mischief. If the document be a valuable security such as a potta, the offence falls under s. 477, Penal Code. See 3 W. R., Cr., 38.

A person commits mischief if he cuts trees on land which he claims, but of which possession, after an execution-sale, has been legally made over to another person, without any objection or formal intervention on his part.—25 W. R., Cr., 46, overruling 21 W., Cr., 38.

Cases of mischief often arise out of the cutting of *bunds*, *aras*, *ails*, *hiras*, &c., at the time of cultivation. One man wants to let water off his land, and the owner of the adjoining land does not wish to receive it, or *vice versâ*. The following ruling may be found useful in the disposal of such cases. It is a recognized servitude of lower lands to receive the natural drainage of adjoining lands on a higher level; therefore, where it is established that, for a long series of years, the water of certain lands has been accustomed to escape in a particular direction, and by certain separate passages into adjoining lower lands, the owner of the latter are not entitled to do anything to interfere to prevent the escape of the water in the manner described.—10 C. L. R., 369. But no length of time will give the owner of the lower land a right to compel the owner of the higher land to send the water on; provided that the latter does not interfere with any portion of the water which flows from his land to

that of the former in a natural and defined channel. The servient owner cannot prevent the dominant owner from putting an end to the servitude at any time he may think proper.—2 C. L. R., 141.

Section 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—I. L. R., 12 Calc., 15.

There is a very unsound ruling (I. L. R., 7 Bom., 126) that the prosecution must show an *intention* to cause wrongful loss. This ruling is, in the teeth of the words of the law "or knowing that he is likely to." The phrase with "intent to or knowing that he is likely to" is equivalent to the English maxim "every man is presumed to know the probable consequences of his acts." Compare the wording of s. 441 relating to criminal trespass. See notes under s. 430, *infra*.

The case of *Eley* v. *Little* (reported in *Times*, November 1885) raised a question as to a conviction under the Malicious Injuries to Property Act (24 & 25 Vic., c. 97, s. 24). Appellant and others were playing football, and trespassed into a lady's park to get the ball back. They were convicted of malicious injury to "cultivated roots," that is, grass, with intent to destroy it, subject to a case stated. The conviction was set aside, as there was no wilful damage. Day, J., said: "Damage done to justify a conviction must be at least appreciable; but treading upon grass in February could not be any damage to it." There never could have been such a conviction in India, though, supposing actual damage had been caused, a conviction might be justifiable under the Penal Code, having regard to the words "or knowing that he is likely to." The words in the English statute are "with intent to."

Punishment for committing mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Committing mischief and thereby causing damage to the amount of fifty rupees.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming any animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Merely wounding such an animal would be punishable as simple mischief only. Offences under this section are now cognizable by the Police (s. 46, Act XI of 1874).

See s. 510, Criminal Procedure Code. The viscera of bullocks alleged to have been poisoned are often sent to the Chemical Examiner, but it is very unsafe to throw out the case merely on the ground that no poison is detected on the examination. I have known of clear cases resulting in conviction in which the Chemical Examiner or his assistant had found no traces of poison.

Mischief by killing or maiming cattle, &c., or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

"Each proprietor of the land has a right to the advantage of the stream flowing in its natural course over his land, and to use the same as he pleases for any purposes of his own, provided that they be not inconsistent with a similar right in the proprietor of the land above or below: so that neither can any proprietor above diminish the quantity or injure the quality of the water which would otherwise naturally descend; nor can any proprietor below throw back the water without the license or the grant of the proprietor above. Where, therefore, the owner of land applies the stream running through it to the use of a mill, or to any other purpose, he may, if the stream is diverted or obstructed by the proprietor of land above, recover against such proprietor for the consequential injury to the mill; and the same principle seems to apply where the obstruction or diversion has taken place prior to the erection of the mill, unless, indeed, the owner of land higher up the stream has acquired a right to any particular mode of using the water by prescription,—that is, by user continued until the presumption of a grant has arisen."—Broome's Legal Maxims (2nd edn.), p. 277.

Levelling, partial filling up, and cultivating of a watercourse by the accused over his own lands, which watercourse conveyed water to the lands of the prosecutor, held to be an offence under this section. 'Means' in themselves lawful may be 'unlawful' because of their tendency to injure others. Thus the act of rendering this channel-bed fit for bearing crops would be unlawful, if, in order to the doing so, the bed was filled up or raised in such a manner as the petitioner knew

would obstruct the flow of water to the prosecutor's land."—6. W. R., Cr., 59.

It was held by a Madras Full Bench that it is not necessary that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right.—I. L. R., 1 Mad., 262.

The Magistrate who made the reference remarked: "I understand the section to be aimed at a wanton waste made with intent to injure, and not at disputes between individuals as to whether one should have more and the other less of a given quantity. These latter, though constantly the subject of magisterial inquiries, lie, I consider, altogether in the Civil Courts." The High Court remarked: "We do not agree in these general observations. . . . . The intent to cause wrongful loss is properly held to be such when the taker of the water takes it without any sort of right, and it matters not that he claims to set up such a right *if the facts are so clear that the claim is manifestly only an additional wrong.* It is for judicial tact to distinguish where the case is sufficiently doubtful to prevent the inference of a wrong intent."

Mischief by injury to public road, bridge, or river.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Encroachments on roads may sometimes fall under the provisions of s. 283, Penal Code, s. 268, s. 425, or this section. The slightest diminution of the width of a road is an offence.

A public road includes a fair margin on either side of the road, which may be used for various purposes in connection with the road itself. Where trees have been planted on the margin of a public road, a suit will not lie by the proprietor of the land through which the road passes to have them removed.—7 C. L. R., 272.

To erect a bund across a khal, which is a navigable channel, used by the public for purposes of conveyance and traffic, is an offence under this section.—6 B L. R , App., 6.

See Act V of 1864 (B.C.), s. 16, which punishes the wilful obstruction of any line of navigation The obstruction must be wilful. Where boatmen had merely tied their boats to trees on the bank of a canal, and the sterns were across stream,—*held*, that there had been no wilful obstruction.—2 B. L. R , A. Cr., 23.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall

be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

No proprietor can lawfully pen back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent.—2 B. L. R., App., 53.

"Sic utere tuo ut alienum non lædas."—Broom's Legal Maxims, p. 274 (2nd edition).

Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.

433. Whoever commits mischief by destroying or moving any lighthouse or other light used as a seamark, or any seamark or buoy or other thing placed as a guide for navigators, or by any act which renders any such lighthouse, seamark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, &c., a landmark fixed by public authority.

434. Whoever commits mischief by destroying or moving any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, *or (where the property is agricultural produce) ten rupees or upwards*, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

As amended by Act VIII of 1882, s. 10.

Mischief by fire or explosive substance with intent to destroy a house, &c.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a

place of worship or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall be also liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of twenty tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last section when committed by fire or any explosive substance.

438 Whoever commits or attempts to commit by fire or any explosive substance such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt

440. Whoever commits mischief, having made preparation for causing to any person death or hurt or wrongful restraint, or fear of death or of hurt or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property; or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass.'

A, the servant of B, was convicted of criminal trespass in going upon the land of C, one of B's tenants, and preventing him from cutting his crops. B was convicted of abetment of criminal trespass. A and B pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under s. 72 of Act VIII of 1869, B. C. (now Act VIII, 1885) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on C, and that no written authority under s. 76 had been given to B by A. *Held*, that it lay upon A and B to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right. *Held* also, that, as under s. 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, A had no right, even if he was acting *bonâ fide*, to restrain C from cutting his crops.—I. L R., 7 Calc., 26.

This is a very important ruling. Illegal attachment of crops, to enforce payment of enhanced rent, is a very common offence in parts of Bengal.

"With *intent* to commit an offence, &c., *i. e.*, with the *purpose* of committing." "A man is presumed to know the probable consequences of his acts" is an English maxim, and its equivalent in the Penal Code is "with intent to *or knowing that he is likely to*." See definition of "mischief," s. 425. Where a man entered an indigo planter's bungalow, in order to have illicit intercourse with the latter's ayah, *held*, that he was wrongly convicted of criminal trespass; but if a man remains on the premises after he is ordered to go, he at once becomes a criminal trespasser. It very often happens that a widow lives in the same *angun* as her husband's relatives from necessity or compulsion. It may be that she desires to open out a separate *sudder* and separate *khirki*, but is not allowed to. Allegations of entry into houses for intrigue should, therefore, be carefully sifted. In many cases, where there are male relatives in the house, the woman has perhaps gone to the ghat to wash the plates and cooking utensils, or is surprised with her paramour in some plantain grove, or adjacent clump of bamboos. The luckless paramour is seized, dragged into the house, and seated in the *angun*. A *thali* and *lota* are then placed at his feet, and the chowkidar is called in. The intelligent and immaculate Jemadar of the nearest outpost then appears on the scene, and manipulates an A Form under s. 457, Penal Code. But it should be added that convictions of such men are quite in accord with native ideas, and where the woman is a married woman or is living under the direct charge or guardianship of relatives, it appears to me that such entry ought to be an offence in a country like India. It is interesting to note the provisions on this subject of another Code, framed by

orientals for orientals, I mean the Chinese Penal Code. See my "Comparative Criminal Jurisprudence." See note under s. 457, *infra*. The offence of criminal trespass may be committed on property in a person's possession, though such possession may not have originated in right.—11 W. R., Cr., 11.

Where accused evaded a toll, and entered a local market, a conviction for criminal trespass was set aside.—I. L. R., 5 Mad., 382.

"To intimidate," &c., means "with the *purpose* of intimidating," &c. So it has been held that an entry on land in assertion of a *bonâ fide* claim is not criminal trespass.—I. L. R., 2 All., 201. But where defendant cultivated a portion of a burial ground, held to be criminal trespass, as no act could be *more calculated to cause annoyance* to those interested in the graveyard.—6 Mad. H. C., 25. This ruling is not in accord with the above interpretation of "with intent to," but the ploughing was clearly an act of mischief.

Distraint of crops otherwise than in accordance with the Bengal Tenancy Act amounts to criminal trespass.—Act VIII of 1885, s. 186.

Defendant was held to have been properly convicted under s. 447 for cultivating village waste land, which he had been ordered by the Subordinate Collector to refrain from cultivating. He entered on the land with intent to commit an offence under s. 188 of the Penal Code.—5 Mad. H. C. Rep., Ap., 17.

A, who had been warned not to shoot on the lands of B, and subsequently having shot a deer near the boundary of B's land, and the deer having run on to B's land, followed it on to such land for the purpose of killing it: *Held*, that his doing so was not criminal trespass.—I. L. R., 4 Calc., 837.

Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass.—9 B. L. R., App., 19. In this case the complainant had previously sued the accused for rent, and his suit had been dismissed on the ground that the relationship of landlord and tenant did not exist between the parties. It was *held*, that the accused had acted *bonâ fide*. They considered themselves possessed of a right, to which the decision in the Act X suit had given some colour, and determined to exercise it.

A person who forcibly enters upon property in the possession of another and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s. 441, without reference to the question in whom the title to the land may ultimately be found.—7 W. R., Cr., 28.

One member of a joint family commits no trespass by entering the house which forms the joint property, but he may be guilty of criminal trespass if he enters the room ordinarily occupied by another member of the family.—15 W. R., Cr., 6.

'Possession' means actual, and not constructive, possession.—17 W. R., Cr., 47.

See definition of 'offence,' s 40, *supra*.

When actual possession of land has been given by the Civil Court, the Magistrate must uphold such possession. It is useless for suitors in this country to establish and enforce their rights in the Civil Courts, unless the Magistracy will lend their aid with vigour and good will to protect those rights, when they are once established.—7 C. L. R., 516.

A co-owner may be guilty of trespass if he ousts another co-owner, just as he may be guilty of mischief if he commits some destruction or

waste of the common property, as by pulling down a common wall or by carrying away a portion of the common property, as by digging and carrying away turf. See remarks of Lord Westbury in *Jacobs* v. *Seward* : also *Cubitt* v. *Potter*, 3 B. and C., 257; L. R., 5 ; and H. T., 478.

The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of 'criminal trespass.'—I. L. R., 2 Calc., 354.

But fishing in a tank or in a private river may be criminal trespass. In the above case the Court remarked: "Though a fishery is property, we do not think that a man who fishes in a *public* river enters upon property in the possession of another, though he may have no right to fish there. The river upon which the prisoner entered being a public one, was not in the exclusive possession of any one, and a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another within the meaning of this section."

So it has been held in Madras that fishing in a public tank is not criminal trespass.

With regard to what amounts to a *bonâ fide* claim of title, and how far such claims oust the jurisdiction of Justices in England, see my "Comparative Criminal Jurisprudence."

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as place for worship or as a place for the custody of property, is said to commit 'house-trespass.'

Explanation. — The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit 'lurking house-trespass.'

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit 'house-breaking' who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described ; or

if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

Firstly.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house and putting his hand through the aperture. This is house breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h.*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

"Although a consent be given to an entrance to one part of a house, yet an entrance into any other part, by any of the means and with the intent described (that is, secretly, or by force, or threats, or fraud, with intent to commit a crime) constitutes the offence of house-breaking." Louisiana P. C., 607. The Calcutta High Court have ruled that a member of a joint family may be guilty of criminal trespass, if he enters the room ordinarily occupied by another member of the family.—15 W. R., Cr., 6.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to the commission of an offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to the commission of an offence punishable with imprisonment.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation made for causing hurt to any person.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Lurking house-trespass or house-breaking by night, in order to the commission of an offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

The accused was found in complainant's house by night, but stated that he was there for the purpose of carrying on an intrigue with complainant's wife. The complainant refused to lay a complaint of house-trespass with intent to commit adultery. *Held*, that the Magistrate was right, under the circumstances, in refusing to convict of a charge which the husband refused to make, though he had the power to convict.—5 Mad. H. C. Rep., App., 6

A charge of adultery requires the sanction of the complainant under s. 199, Criminal Procedure Code. But the entry in order to commit *any* offence appears to constitute the offence under this section. Suppose that complainant had charged in the above case with intent to commit adultery, it can scarcely be said that the Magistrate would be bound to commit on the ground that adultery is exclusively a sessions case. The entry is the gist of the section, and I submit that a Magistrate, if satisfied that the entry was for adultery, would be justified in convicting, even though complainant should adhere to his charge of entry with intent to commit theft. Magistrates should show some consideration for the stern exigencies of caste. Under the first part of the section it is sufficient to charge an intent to commit an offence punishable with imprisonment. It is, therefore, hardly fair to compel complainants to make an admission, which may be followed by his social excommunication. The lurking house-trespass or house-breaking is a substantive offence, and the rest is mere aggravation. It is only necessary that the Magistrate should be satisfied that there was an "intent to intimidate, insult, or annoy, or to commit an offence." In another Madras case, entry into a house in order to have sexual intercourse with complainant's wife, was held to be criminal trespass punishable by a Magistrate.—8 Mad. H. C. R. App., 6 But see I. L. R., 5 All, 233.

Where the accused persons, execution-creditors, in company with an authorized bailiff, broke open complainant's door before sunrise, with intent to distrain his property, for which they were convicted of lurking house-trespass or house-breaking by night,—*held*, that as they were not guilty of criminal trespass, there being no finding of any such intents as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed.—I. L. R., 2 Mad., 30.

Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in house-breaking, &c., to be punishable for death or grievous hurt caused by one of their number.

460. If, at the time of the committing of lurking-house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

461. Whoever dishonestly, or with intent to commit theft, breaks open or unfastens any closed receptacle which contains or which he believes to contain property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Forgery.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Forgery by English law is the making of a false document, with intent to defraud, or by which any person may be injured. It may be committed—

(*a*) by in any way making a document to purport to be what in fact it is not;

(*b*) by altering a document, without authority, in such manner as to alter its effect;

(*c*) by introducing into a document, without authority, whilst it is being drawn up, matter altering its effect;

(*d*) by signing a document, in the name of any person, without his authority;

(*e*) by signing a document in the name of any fictitious person.

To constitute the offence of forgery, it is not sufficient to prove that, in making the document in respect of which the offence is charged, the accused knew that the document might injure, but it must be proved that it was his intention that it should injure another.—10 C. L. R., 184.

In another case it has been ruled, that a general intention to defraud without the intention of causing wrongful gain to one person or wrongfull loss to another, is sufficient to support a conviction. Maule, J., says in *Reg.* v. *Nash*: "There may be an intent to defraud without the power or the opportunity to defraud." And again: "It is not necessary that any person should be in a situation to be defrauded." Let a person's title to property be ever so good, yet, if, in the course of an action brought against him to gain possession of the property, he uses a forged document such as this *kiba* by way of supporting his title, though there may be no necessity for the use of it, he uses it fraudulently."—I. L. R., 9 Calc., 53.

Where the number of a plot of land was incorrectly entered in a deed of sale, it was held not to be forgery, nor an offence under s. 192, to alter such number to the correct number.—I. L. R., 5 All., 217.

The signing of a valutnamah in the name of co-decree-holders without their authority to do so, and delivering it to a vakeel with instructions to file a petition stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery.—6 W. R., Cr., 73.

Falsification of a record, in order to conceal a previous act of negligence not amounting to fraud, does not amount to forgery.—I. L. R., 4 Bomb., 657.

The forgery of a copy comes within the a purview of the section.—Full Bench Ruling, Marsh. Rep., 270.

Making a false document.

464. A person is said to make a false document—

First—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person whether such person be living or dead at the time of such alteration; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(*a*.) A has a letter of credit upon B for rupees 10,000, written by Z A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque A fraudulently fills up the cheque by inserting the sum of ten thousand rupees, A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker, signed by A. without inserting the sum payable, and authorized B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e.*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f.*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government promissory note and makes it payable to Z or his order, by writing on the bill the words "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b.*) A writes the word 'accepted' on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact

draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

"It is clear from the definition of 'forgery' that the simple making of a false document constitutes the offence of forgery; and that it is not necessary that it should be issued or made known to the injury of a person's reputation before the offence is completed or the offender liable to punishment. The publication of such a document forms no part of the offence and the Judge is, therefore, wrong in holding that no offence had been committed, because the petition had not been presented in Court or shown to any person. He is equally wrong in considering that no offence had been committed, because it was uncertain whether such a person as Dilawar Shah was in existence; for, as shown by the second explanation to s. 464, it is clear that a false document may be made in the name of a fictitious person. (In this case the accused were apprehended in the act of writing the draft of a petition bearing the name of Dilawar Shah, charging Rajah Nilanund Singh with the murder of a fakir, with the object, as alleged by the complainant, of extorting money from the Rajah.) Is this petition evidence of the murder? It certainly is not evidence as it stands. . . . The paper is the mere narration of an alleged fact, and there is no one to swear to the truth of its contents. But there can be little doubt that the person who prepared the petition believed that it might be used as evidence, and prepared it with that intention; and this being the case, the petition becomes a document

within the meaning of s. 29; and as it contains statements injurious to the character of Rajah Nilanund Singh, and can have been prepared with no other intent than to cause injury to him, and the statements contained therein are alleged to be false, the parties concerned were rightly committed on a charge of forgery."—2 B. L. R., A. Cr., 12.

See note under s. 192, *supra*.

A misrepresentation by false description of one's position in life falls under the heading of cheating, and not under that of forgery. When, therefore, a document purported to have been signed by G. L. Putwaree, and it was really signed by G. L., who, however, was not a Putwaree at the time, it was held, that the document was not a forgery.—21 W. R., Cr., 41.

Where defendant got another to sign a blank receipt, and filled it up for Rs. 19-8, *held*, that whether the document was false or not depended on whether authority had been given to fill it up with such sum.—10 W. R., Cr., 7.

A mere intent to deceive is not sufficient. So it has been *held*, that where reports or books have been altered to screen negligence or even criminal breach of trust, such acts do not amount to forgery—I. L. R., 5 All., 553; 4 Bom., 657; 5 Calc., 221. See notes under s. 192, *supra*. In a case reported at I. L. R., 10 Calc., 584, it was held, that the fabrication of a false sunnud to support a claim to the title of "lushkar" did not amount to forgery. This ruling is open to question. The Judges held, there was no intention to defraud, but there was clearly an intention to "support a claim on title," and such intention was dishonest. The Judges further remarked: "Nor does the act of the appellants, in our opinion, amount to any other offence." But the act was clearly an offence under s. 192, Penal Code, and there are numerous rulings declaring similar acts to be offences under s. 192. The Judges were Mitter and Norris, JJ.

That which constitutes a false document within the meaning of ss. 463 and 464 is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt forms similar to those formerly used by a certain company, and corrected proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence.

Per Garth, C. J.:—"The fact that the word 'make' is used in s. 464 in conjunction with the words 'sign,' 'seal' or 'execute' clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it." Even if this definition be correct, the prisoner was certainly guilty of abetment of forgery. He caused the receipt forms to be printed, and the words 'Bengal Coal Company' were printed on the top of each form. That is, the receipt forms purported to have been printed by the authority of a person by whose authority the prisoner knew they were not printed. It was not necessary that the printer should have any guilty intention or knowledge (s. 108, explan. 3.) In this case the High Court might have convicted of abetment.—8 C. L. R., 572. See I. L. R., 3 Mad., 4; I. L. R., 7 Calc., 352.

To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document and to ask for information as to a fact to be inserted in false document, do not constitute forgery, nor an attempt to commit forgery, but are facts which would support a conviction for abetment of forgery, as being acts done to facilitate the commission of the offence.—I. L. R., 3 Mad., 4.

Punishment of forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Also punishable with whipping on second conviction. Act VI of 1864.]

Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such offence, *held*, that the making of such entries did not constitute the offence of forgery.—I. L. R., 5 All., 221.

Forgery of a record of a Court of Justice or of a public register of births, &c.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Section 466 is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrears, so that he might take steps to enforce payment, and was convicted by the Sessions Judge under s. 465. *Held*, on appeal, that the accused ought properly to have been convicted under s. 192, the provisions of that section not being confined to false evidence to be used in judicial proceedings.—7 C. L. R., 365.

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Forgery of a valuable security or will.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property, or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Forgery for the purpose of harming the reputation of any person.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

'A forged document.'

470. A false document made wholly or in part by forgery is designated 'a forged document.'

"Using as genuine a forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

The presentation of a forged deed of divorce for registration amounts to 'using' under this section.—11 W. R., Cr., 16. The mere filing of a forged document raises a presumption that the filer knew it to be forged.

A District Superintendent of Police having directed that Rs. 2 monthly should be cut from the pay of a constable to satisfy his creditors, the constable altered a genuine receipt for Rs. 8 into one for Rs 18 by adding the figure 1. *Held*, no offence under s. 471, as Rs. 18 was the whole amount due, and the intent of the prisoner was to induce his superior to refrain from the illegal act of stopping a portion of his salary. It did not necessarily follow that he would set up the altered receipt to defeat his creditor's claim.—I. L. R., 7 All., 403.

So, where the prisoner used four receipts for rent in the place of genuine receipts, which he had lost, held, no offence under s. 471, having regard to the definitions of 'dishonestly' and 'fraudulently.'—I. L. R., 7 All., 459.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under Section 467.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeit seals were found in the prisoner's possession. As he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.—2 W. R., Cr., 5.

See s. 105, Evidence Act.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable otherwise

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than Section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a valuable security or will known to be forged with intent to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in Sec-

tion 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in Section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents described in Section 467, or possessing counterfeit marked material.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents other than those described in Section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in Section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, &c., of a will.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to

secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See under s. 30, *supra*.

OF TRADE AND PROPERTY-MARKS.

Trade-mark.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place or that they are of a particular quality, is called a trade-mark.

Property-mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Using a false trade-mark.

480. Whoever marks any goods, or any case, package, or other receptacles containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they are made or manufactured at any time or place at which they were not made or manufactured, or that they were of a particular quality of which they are not, is said to use a false trade-mark.

The New York Penal Code defines 'goods' as including every kind of goods, wares, merchandise, *compound or preparation*, which may be lawfully kept or offered for sale. Sec. 417, *id.*, provides a penalty for refilling beer, mineral water, &c., bottles, with intent to sell the same, without the written consent of the manufacturer or dealer, whose name, mark, or label is stamped on such bottles Such acts are common in India. Even medicine bottles with Calcutta or English labels on them, are refilled and sold in the mofussil *as medicine prepared by the firm mentioned on the label.*

Using a false property-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the

intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade or property-mark with intent to deceive or injure any person.

482. Whoever uses any false trade-mark or any false property-mark, with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

No trader importing goods can lawfully adopt a trade-mark which is calculated to cause his goods to bear in the market the same name as those of a rival trader.—I. L. R., 6 Mad., 108.

Lord Cranworth said in *Seixo* v. *Provezende* (L R., 1 Ch. App., 196): "I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer (an importer I hold to be the same) have, from the mark or device he has used, become known in the market by a particular name, I think that the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of the rival as the actual copy of his device." See case of *Ralli* v. *Fleming*, I L. R., 3 Calc., 417.

There are three different classes of cases in which the Courts in England have given relief in cases of trade-mark: (1) those of imitation of the entire trade-marks, about which no question could exist; (2) imitation so nearly resembling the entire original as to be colourable, though not fraudulently so; (3) cases where the entire original was not very closely copied, as discussed in *Leather Cloth* v. *American Leather Cloth Co.*

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant, to denote that any property has been manufactured by a particular person or at a particular time or place, or that the same is of a particular quality, or has passed through a

particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Knowingly selling goods marked with a counterfeit property or trade-mark.

486. Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulently making a false mark upon any package or receptacle containing goods.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle con-

tains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding section.

Defacing any property-mark with intent to cause injury.

489. Whoever removes, destroys or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during a voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(*a.*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b.*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*.) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks, from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*.) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dâk company to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

An agreement for personal service in conveying indigo from the field to the vats is not a contract the breach of which is punishable by this section.—6 W. R., Cr., 80.

"We have great doubts whether the words 'during a voyage or journey' do not limit the offences made punishable under this section to offences against travellers."—9 W. R., Cr., 12.

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within British India, to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the

continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

See Act XIII, 1859, which may be extended to any district by the Local Government. See also Act IX, 1860.

A mahout, or elephant-driver, is not an artificer, workman, or labourer. —8 C. L. R., 254.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during the lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contract-

ing such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

As to offences against marriage in various countries, see my "Comparative Criminal Jurisprudence;" also as to second marriage within the period of seven years, under the *bonâ fide* belief that the first husband or wife is dead. A case is reported in *The Times* for November 23rd, 1885, in which defendant was sentenced to eight days' imprisonment only. His first wife had left him to go and live with another man, and he had not heard of her for five years. *Bonâ fide* belief of death was, therefore, held to be a defence to the charge, although the statutory period of seven years had not elapsed. The Recorder expressed an opinion that there was no defence in point of law, although *there was an overwhelming case against any punishment.* The defendant had done no wrong to his first wife, because she went away with another man. The sentence of eight days was a nominal sentence, as it involved the defendant's immediate discharge. It has been held in India that a woman contracting a second marriage within the seven years is bound to show that she used all means in her power to ascertain whether her first husband was dead.—4 W. R., Cr., 25.

Some of the English decided cases appear to be very harsh.—*e. g.*, evidence is not admissible to show that the prisoner honestly believed that his first wife was dead, when he married a second time within seven years of his last having heard of or seen his first wife.—*R.* v. *Bennett.* 14 Cox, C. C., 45. To the same effect is *R.* v. *Gibbons*, 12 Cox, C. C., 237 But the law is gradually veering round. See last Edition of Roscoe p. 341; and Stephen's Digest.

A Mahomedan guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494, Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class, condemned. —I. L. R., 4 Calc., 10. In this case it did not appear that the girl was present or even cognizant that the marriage was to be contracted on her behalf.

It has been held in Bombay, that caste customs authorizing a woman to abandon her husband and marry again without his consent, were void for immorality.—2 Bom. H. C., 124 And it was doubted whether a custom authorizing her to marry again, during the lifetime of her husband, and with his consent, would have been valid.—10 Bom. A. C., 381. Among the Nairs, as is well known, the marriage relation involves no obligation to chastity on the part of the woman, and gives no rights to the man. But here what the law recognizes is not a custom to break the marriage-bond, but the fact that there is no marriage-bond at all.—Mayne's Hindu Law and Usage, p. 42.

The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband. She cannot, therefore, during his lifetime, enter into any other valid marriage contract. Her going through the ceremony of *nika* with a Mahomedan is, therefore, an offence under s. 494.—I. L. R, 4 Bom., 330.

This ruling could scarcely be applied against low caste Hindu women in Bengal. It is by no means uncommon for Bowrees, Bagdees, Metays,

Dulais, Kutals, &c., to marry *senga* in the lifetime of their first husbands. Where adequate reasons exist, such a practice is permitted, and thoroughly recognized by the headmen of these castes. The High Court have partially recognized such a custom in a case reported in 7 C. L. R., 354. see *infra*.

Words for second marriage in different parts of the Province of Bengal, Behar, and Orissa are *nika*, *senga*, *sagai*, *dutia* and *chumoona*.

A Mahomedan wife can claim a divorce on the ground of the apostasy or impotence of her husband. See Baillie's Mahomedan Law.

In Madras, cohabitation of a man and a woman under the Alyasantana law is not a marriage.—I. L. R., 6 Mad., 374. See also 4 Mad. H. C., 196; and I. L. R., 3 All., 738. Under this system a wife may be given in marriage by her maternal relations to another man, provided the presents received from the first husband are returned.

In the absence of a release from the husband, Courts of law will not recognize the authority of a caste to declare a marriage void or to give permission to a woman to remarry.—I L. R., 1 Bom., 347.

It is very doubtful if this ruling can be applied to lower castes in Bengal, Behar, and Orissa. When the husband refuses to give a *chor-chithi* or *char-chitthi*, it is very common for the caste punchayet to assemble and to permit the woman to remarry, the ground generally being the impotency or incurable disease of the husband, and sometimes wilful and continued desertion and neglect to maintain. It may be remarked that impotency was a *canonical* disability under the former English law, a ground for divorce *à vinculo*, regarded as necessary *pro salute animarum*. (1 Bl. Com., p. 440). And under the new Divorce Acts, a decree of *nullity of marriage* may be obtained from the Court on any ground which would have formerly justified the Ecclesiastical Court in granting a divorce *à vinculo*. See Steph. Com., Vol. II, p. 298.

Having regard to the customs and life of the people, the above ruling and the ruling at 4 Bom., 330, appear to be harsh and strained. Suits for divorce are unknown in the Civil Courts: and in such matters the punchayet is the best judge, and is fit to be trusted. It appears harsh to punish parties for acting in accordance with the order of the governing body, virtually the only tribunal to which they have access.

A conviction under this section for marrying again during the lifetime of a husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void.—7 C. L. R, 354. This ruling accords with the above remarks. This case was tried in Monghyr, the parties being sweepers.

A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a profesing Christian.—3 Mad. H. C. Rep., Ap., 7. But see I. L. R., 4 Bom., 330, above quoted.

In an English case, the prisoner was married to A in 1865 and to B in 1882, A being still alive. There was no proof that the prisoner and his first wife had lived apart for seven years before the second marriage. The Court (presided over by Coleridge, C. J.), held, that this rendered it unnecessary for the prosecution to show that he knew his first wife was alive, for the existing state of marriage must be presumed to have continued until it was shown that it had ceased to exist, and therefore he was rightly convicted of bigamy.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marriage ceremony gone through with fraudulent intent without lawful marriage.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

The provisions of s. 50 of the Evidence Act show that where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved. *Queen* v. *Wazira* overruled.—I. L. R., 5 Calc., 566.

The Judges who referred the case to a Full Bench remarked: "We cannot see that any inconvenience is likely to follow from adopting the stricter rule. Amongst the large majority of the people of this country marriage is accompanied by so much of ceremonial and publicity that there can rarely be any difficulty in proving it. If there be any class of the community with whom it is otherwise, whose marriage notions and practices are so lax as to render many marriages of doubtful validity, this seems to us an additional reason for requiring the actual facts to be brought properly before the Court, so that it may determine the validity or invalidity of the marriage in each case that comes before it."—See also 4 W. R., Cr., 31. But the doctrine of strictness must not be pushed too far.

In a case under s. 498, the complainant, the woman, and her mother swore to the fact of the marriage. The accused did not cross-examine the witnesses as to the fact or validity of the marriage or otherwise impugn it: *Held*, that the marriage was sufficiently proved.—I. L. R., 9 Mad., 9. Probably, the rulings in I. L. R., 5 Calc., 566, and 3 All., 233, do not decide that a husband or wife is precluded from proving his or her

marriage. Even a marriage in England may be proved by any person who was actually present and saw the ceremony performed. it is not necessary to prove its registration or the license or publication of the banns.—*R.* v. *Allison*, R. & R., 109; *R.* v. *Mainwaring*, Dears and B., 132: S. C., 26 L. J. (M. C.). 10.

As to the law of other countries concerning adultery, see my "Comparative Criminal Jurisprudence." In England, every person who commits incest, adultery, fornication, or any other deadly sin (not punishable at Common Law) is liable, on conviction in an Ecclesiastical Court, to do penance, and to be excommunicated, and to be imprisoned for six months. 13 Edw. I, c. 4; 53 Geo. III, c. 127, ss. 1—3; and see Phillimore's Ecclesiastical Law, 1081, 1442. But Sir James Stephen remarks that incest is the only offence which is ever prosecuted in these days, and that rarely. Incest is a penal offence in America, and punishable with imprisonment in a State prison for ten years.—New York Penal Code, 342.

It is not necessary that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman.—21 W. R., Cr., 13.

Sagai wives, *i. e.*, widows married in accordance with the custom of *sagai* prevailing amongst the Koeroes and other low castes of Behar, are so far the legal wives of their husbands as to justify the punishment of persons committing adultery with them.—3 C. L. R., 410.

In the Holwai caste, a valid *sagai* marriage may be contracted with a widow, where there is a wife already living, provided that wife be childless.—5 C. L. R., 505.

A marriage by the 'Gandharba' form is nothing more nor less than concubinage, and has become obsolete as a form of marriage giving the *status* of wife and making the offspring legitimate.—I. L. R., 3 All., 738.

With regard to *sagai* or *senga* marriages, they are considered lawful, though the first husband be alive, if the caste punchayet has allowed them; for the punchayet only permit them on some valid ground, such as impotency of the husband, omission or inability to maintain the wife.

Death of husband does not necessarily put an end to a prosecution for adultery.—3 Mad. H. C. Rep., Ap., 55,

Where a man is prosecuted for raping a woman, he cannot be punished for adultery, unless the husband institutes a complaint of adultery.—I. L. R., 5 All., 233.

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains, with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It was formerly held (*Queen* v. *Wazira*), that if the man and the woman were living together, this was sufficient to throw the burthen of proof on the accused that they were not man and wife. This ruling has been overruled.

Complaints of unlawful detention under this section are often made by sons-in-law against their fathers-in-law or mothers-in-law. *Primâ facie*, the husband is the legal guardian of his wife, and is entitled to require her to live in his house from the moment of the marriage, however young she may be. But this right does not exist where, by custom or agreement, the wife is to remain in her parent's house until puberty is established.—23 W. R., 178. See Mayne's Hindu Law and Usage, p. 80.

A man cannot be convicted of detaining an enticed woman until the enticing has been proved.—I. L. R., 3 All., 251.

If this ruling be correct, a mother, who has brought away her daughter from her husband's house, with the latter's consent, and subsequently detains her for an unlawful purpose, would not be punishable. But if the illicit intent can be proved, there is no reason why such a mother should not be punished. The interpretation by the Allahabad High Court of the words "any such woman" appears to be open to question. The words "such woman" seem to refer back to the words "who is and whom he knows or has reason to believe to be the wife of any other man," and can hardly be held to mean "such taken or enticed away woman." It has been held that the offence of dishonest retention of stolen property may be complete without any guilty knowledge at the time of receipt.—3 Mad. H. C., Ap., 42 Why then should not a mother-in-law be punished for detaining her daughter for an unlawful purpose? Such an act is by no means uncommon in Bengal. The Allahabad ruling is not in accord with native life and ideas. It is instructive to contrast the provisions on a similar point of a Code that has been framed by orientals for an oriental country. "When parties have been lawfully affianced to each other, and the marriage presents delivered and accepted, if the bridegroom forcibly takes away his wife, previous to the period agreed upon, or if the bride is designedly retained and refused to the bridegroom, the punishment in either case is 50 blows."—China Penal Code, 101. It is not necessary to prove illicit intent, and the act is an offence, though there has only been a betrothal and the wife has never gone to her husband.

"With any person," *Quære*—Is it necessary to prove any particular person? A poor husband knows that his mother-in-law is detaining his wife generally for the purpose of facilitating her intrigues with well-to-do men in the village. It is impossible for him to prove the illicit intercourse with any particular person. Respectable men in the village speak to their belief that the woman is corrupt, and that the mother is abetting her corruption. Is not such evidence sufficient to convict the mother who detains the wife and will not let her go back to her husband? Section 551, Criminal Procedure Code, does not get rid of the difficulty, as a woman over fourteen can only be "*restored to her liberty*." This does not benefit the luckless husband, if his wife prefers to remain with her mother. It would be quite in accord with native wishes and ideas, if the Legislature were to make s. 498 more stringent and comprehensive so as to include (if it does not already include) unlawful detention by corrupt and avaricious mothers-in-law. There should be an exception preventing any magisterial interference, if such facts can be shown for the defence as would justify a divorce,—*e. g.*, impotence or incurable disease of the husband, and also such facts as the husband's neglect or *inability* to maintain (*e. g.*, where he is a wandering *fakir* or *bairâgi*), habitual ill-treatment, his being a notorious bad character, his keeping a concubine, &c.

In the absence of very clear evidence of custom, which, if well-founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage so as to render punishable under s. 498 a man who entices away the woman—I. L. R., 6 Mad., 374.

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*.) A says "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(*b*.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(*c.*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

Imputation of any truth which the public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public function, or respecting his character, so far as his character appear in that conduct, and no farther.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts of Justice.

Fourth Exception. — It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Merits of a case decided in a Court of Justice; or conduct of witnesses and others concerned therein.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any persons as a party, witness, or

agent, in any such case, or respecting the character of such person, as far as his character in that conduct, and no farther.

Illustrations.

(*a.*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest" A is within this Exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(*b.*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Merits of a public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book submits that book to the judgment of the public.

(*b.*) A person who makes a speech in public submits that speech to the judgment of the public.

(*c.*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z—"Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this Exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(*e.*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

A fair comment is a comment which is true, or which, if false, expresses the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds.—Stephen's Digest, 274. The critic must not travel into the domestic life to point his slanders.—*Carr* v. *Hood*. In *Hunter* v. *Walsh* (4 F. and F., 1005) the Judges remarked: "An author's character is more entitled to protection than the writer's display of his perverted talent and reckless invective before the eyes of anonymous readers. The reputation is a known, substantial, and clearly-defined property; the right of free speech in such circumstances is somewhat shadowy at best, and its effects are unknown and unascertainable." See cases collected under this and the other Exceptions in my "Comparative Criminal Jurisprudence."

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by a person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in goodfaith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this Exception.

Where a sentence of excommunication for having attended a widow remarriage was communicated to the complainant by a registered post-card.—*Held*, that the publication was in excess of the purpose for which the privilege was allowed, and amounted to defamation.—I. L. R., 6 Mad., 381.

The same was held of a telegram in England.—*Williamson* v. *Freer*, L. R., 9 C. P., 393.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Accusation preferred in good faith to a duly authorized person.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

The ruling in the case of *Laidman* v. *Hearsey* (I. L. R., 7 All., 906) appears to be opposed to well-established rules of evidence. The defamation consisted in stating that complainant, while sitting in Court, had, on a certain date, made use of certain abusive expressions to certain persons. This charge was shown to be clearly false; but complainant was asked if he had ever made use of abusive expressions during the whole course of his official career. The Court permitted defendant to give evidence on this point. On this principle, a man, prosecuted for defaming another by saying he had committed theft on a certain occasion, might be allowed to show that the person defamed had committed theft on some previous occasion. The whole evidence showed an utter absence of good faith on the part of the defendant, and that he was actuated by the meanest motives of malice and spite. The Judge who tried the case designated it as "a vulgar little quarrel." The Calcutta High Court thought otherwise in a case where one of its Judges was defamed by a newspaper editor, and did not

allow the defendant to show that the Judge had conducted himself in a curious or extravagant way on other occasions. This Judge had never been seen by the editor, and there was a bare possibility of the latter being actuated by good faith: there was no such possibility in the case of Capt. Hearsey.

A story injurious to the reputation of plaintiff's wife was bruited about by defendants, and consequently made the subject of a punchayet. Plaintiff sued the defendants for damages. The Sudder Dewanny Adalut remarked: "Before we can award damages, we must be satisfied that the words were uttered with a malicious intention. The malice can, of course, be inferred from the mode in which the scandal was propagated, or from proof of other acts, on the defendants' part, indicative of malicious feeling towards the plaintiff, from which it might be inferred that the defendants had wantonly lent themselves to the dissemination of the slander, in the malicious hope of annoying or injuring the plaintiff. Such malicious intention may be inferred from the display of enmity or ill-feeling on other occasions." The Court found that defendants had only repeated what they had heard from others, and that the '*only question which they had discussed was whether the prevalence of the report and the general belief accorded to it required the assemblage of a punchayet or not*, and therefore dismissed the plaintiff's case.—S. D. A., 1859, p. 1338.

This exception reproduces the rule laid down by Lord Campbell in *Harrison* v. *Bush* (25 L. J., Q. B., 25): "A communication made *bonâ fide* upon any subject-matter, in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminatory matter, which, without the privilege, would be slanderous and actionable." The accusation must be preferred in good faith,—that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of his charge, as an ordinary man should be expected to exercise.—*Per* Straight, J., I. L. R., 6 All., 220. The same Judge remarked in the case of *Abdul Hakim* v. *Tej Chunder Mukarji* (I. L. R., 3 All., 817): "It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true, though it is obvious that, *according as it is more or less true or false, the question of his good faith or otherwise must be determined.*"

Where a person called on by a punchayet convened by the complainant's relatives to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation—*Held*, that such statement being privileged, there could be no conviction for defamation in respect of it.—I. L. R., 7 Mad., 36.

Imputation made in good faith by a person for the protection of his interests.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations.

(*a*.) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready-money, for I have no opinion of

his honesty." A is within the Exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b.*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the Exception.

The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred :—"Has his (the complainant's) character been inquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted ; but that it was also true that the prosecution had, to the accused's own knowledge, been ordered to be withdrawn by the District Judge. *Held*, that although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him was made in good faith or for the public good. —I. L. R., 4 Bom., 298.

The accused, an Inspector of Police, was sent to inquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the banias of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private inquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." A complaint was made on behalf of two of the Bania females, which was dismissed by the Magistrate. The Sessions Judge ordered the Magistrate to commit. On a petition to the High Court to have the order of commitment set aside, the Court remarked : "If we look at the report, which is said to be defamatory, it certainly has been made by an officer in execution of his duty ; in truth, made directly as a result of an order from his superior ; and, notwithstanding that the accusations or imputations against the Bania women are sweeping, it does not, as I think, appear from the document itself that they were made recklessly or unjustifiably ; so that, if there were no further evidence appearing in the case of the prosecution than the document itself, I think the accused would be covered by the 9th exception to s. 499. But we have had some other portion of the evidence read to us, to which the Judge made no reference, and from that it certainly does seem to us that there are materials on which the accused may well enough be sent to trial."—6 B. L. R., Ap., 42. The report does not say what these materials are. See 14 W. R., Cr., 22

A man having spiritual jurisdiction over another, which he is entitled to exercise in virtue of a contract implied in the complainant's adherence to the sect, cannot be held criminally responsible for the censure which in good faith he passes on that other's conduct.—I. L. R., 6 Mad., 395 ; I. L. R., 8 Mad., 140.

Caution intended for the good of the person to whom it is conveyed or for the public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some

person to whom that person is interested, or for the public good.

In a case of defamation, proof of despatch by post to a certain district of the paper containing the defamatory matter, is tantamount to proof of publication in that district.—5 W. R., 44.

The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of s. 499, Penal Code. The criminal law of this country with regard to defamation depends on the construction of s. 499 of the Penal Code, and not on what may be the English law on the same subject.—14 W. R., Cr., 27.

C was put out of caste by a punchayet of his caste-fellows, on the ground that there was an improper intimacy between him and a woman of his caste. Certain members of the punchayet circulated a letter to the members of the caste, requesting them not to receive or eat with C or the woman. *Held* by Straight, J., that if the accused had contented themselves with announcing the determination of the punchayet and the grounds upon which it was based, they might have been protected. But as they travelled into other matters and made insinuations, which in point of fact were false, they could not be held to have acted in good faith.—I. L. R., 3 All., 664; see also I. L. R., 3 All., 342.

Straight, J., remarked: "No Court could wish to interfere with those domestic rules and laws which regulate and control the relations between the members of a caste. On the contrary, the tendency would rather be to countenance and protect them." If the accused mean well, they should be protected: but if they are actuated by malice or enmity, they should be punished.

In dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason, after due care and attention, to believe that such allegations were true.—I. L. R., 4 Calc., 124.

Under s. 105 of Act I of 1872, it is incumbent on the accused to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisoes contained in any part of the Penal Code or in any law defining such offence.—*Ibid.*

Section 27 of Act XVIII of 1862 does not apply to the mofussil. *Quære*—Whether it applies to the Presidency-towns?—*Ibid.* See also 4 W. R., Cr., 22.

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

It is enough to show that the imputation is defamatory, and has been made with the requisite intention and knowledge. It is for the defendant to show that his statement was made with due care and caution.—4 W. R., Cr., 22; I. L. R., 4 Calc., 124. See s. 14, Evidence Act.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

It is not necessary that the threat under this section should be direct. It may be communicated through a third party.

There can be no criminal intimidation where the injury, of which complaint is made, is the hardship arising from a conventional punishment, which a spiritual superior, acting in the exercise of his authority as regulated by the custom of the caste, is competent to inflict.—I. L. R., 6 Mad., 388.

Such hardship is not injury; that is, it is not harm illegally caused, the exercise of jurisdiction in matters relating to the sect not being in itself illegal. Much the same was held in *Reg.* v. *Hart* (1 Wm. Bl., 386), where a lady of the quaker sect was expelled therefrom for frequenting balls and concerts.

It is often said the Penal Code is too wide and comprehensive. I venture to think that such a remark is generally made by those who have but a very slight knowledge of the English law, and none at all of Continental Penal Codes. It is quite possible that, before long, some additions will have to be made to the criminal statute-law of India. 38 and 39 Vict., c. 86, s. 7 imposes a penalty of £20 (or imprisonment for three months) "on every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or

(2) *Persistently follows such other person about from place to place, &c.*"

Intentional insult with intent to provoke a breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The intention to insult (by words, looks, deeds, or signs) is the gist of the offence under this section. A suit will lie in the Civil Court to recover damages for verbal abuse of a gross character, with proof of consequential damage.—I. L. R., 12 Calc., 109, following 1 W. R., 19; 6 W. R., 151; 6 B. L. R., Ap., 99; 3 C. L. R., 181. See also I. L. R., 8 Mad., 175, where it is held that proof of loss is not necessary.

Circulating false report with intent to cause mutiny or an offence against the State, &c.

505. Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire or to cause an offence punishable with death or transportation or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Criminal intimidation by an anonymous communication.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Act caused by inducing a person to believe that he will be rendered an object of the Divine displeasure.

Illustrations.

(*a.*) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(*b.*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Where the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case,

consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction.—I. L. R., 8 Mad., 140.

Word or gesture intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given.—3 Mad. H. C. Rep. 141. But the Calcutta High Court have given remedy in civil cases.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.

OF ATTEMPT TO COMMIT OFFENCE.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that

offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a.*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket: A is guilty under this section.

The Calcutta High Court have, in one or two cases, interpreted this section as if the wording were the same as in s 307, dealing with attempts to murder. Such an interpretation is not warranted by the terms of the section "and in such attempt *does any act towards* the commission of the offence." It is evident that the Indian law is intended to be wider than the English law, and the importation of English decided cases (as in 8 C L. R., 572) has had the result of defeating the intention of the framers of the Penal Code. As to the law of other countries concerning attempts, see my "Comparative Criminal Jurisprudence." It will be observed that some of the Calcutta High Court rulings have made the Indian law actually narrower than the English law. In France, an attempt is a commencement of execution, which is only suspended or fails in its effect owing to circumstances independent of the will of its author. The German law is much the same. It was held by the Supreme Court in the case of *United States* v. *Quincy*, that to attempt to do an act does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it. Any effort or endeavour to effect it will satisfy the terms of the law.

Incendiarism had occurred several times in a village: and one evening the prisoner was found with a ball of rag containing a piece of burning charcoal similiar to other balls which had been used on previous occasions. Glover, J., said: "Had the ball contained a piece of unlighted charcoal only, I should have considered that there had been no sufficient commencement of any act which tended towards the commission of mischief by fire, and that the prisoner would have been in the same position as a man who, intending to murder some other person, buys a gun or poison and keeps the same by him. In this case the instrument for causing mischief by fire was completely ready, and was not used only because the party carrying it had no opportunity. It must be assumed that a person going about at night provided with an apparatus specially fitted for committing mischief by fire, intends to commit that mischief, and that he has already began to move towards the execution of his purpose."

Mitter, J., said:—"In order to constitute an attempt it is not only necessary that the prisoner should have done an overt act 'towards the commission of the offence,' but that the act itself should have been done '*in the attempt*' to commit it. If a man goes out into a street with a loaded gun to shoot Z, and does not find him, or when he finds him makes no attempt either from fear or repentence, can it be said that the man is guilty of attempting to murder Z? I think not. The distinctions made by the Legislature between the offences of 'attempting to commit dacoity,' 'making preparations for dacoity,' and 'assembling together for the purpose of committing dacoity,' seem to support this view very strongly."—3 B. L. R., A. Cr., 55.

The judgment of Mitter. J., is diametrically opposed to the English law and to the illustrations given in Stephen's Digest. An attempt to commit a crime is *an act done with intent* to commit that crime, and forming *part of a series* of acts which would constitute its actual commission if it were not interrupted. A procures dies for the purpose of coining bad money. A has attempted to coin bad money. According to Garth, C. J., (in 8 C. L. R., 572) this would only be preparation. A kneels down in front of a stack of corn, and lights a lucifer match, intending to set the stack on fire; but, observing that he is watched, blows it out. A has attempted to set fire to the stack. But compare the judgment of Mitter, J., in the above case. On the next revision of the Code, an explanation should be added to the section in order to nullify the effect of such indefensible rulings.

"It does not follow, because the laws do not punish intentions, that therefore a crime begun by some action, significative of the will to complete it, is undeserving of punishment, although it deserves less than a crime actually committed. The importance of preventing an attempt at a crime justifies a punishment; but, *as there may be an interval between the attempt and the execution*, the reservation of a greater punishment for a consummated crime may present a motive for its non-completion." Beccaria, Chap. XIV.

If the Calcutta High Court case-law were sound, an attempt ought to be punishable with the same punishment as the offence itself; and an attempt which, if completed, would actually amount to the offence itself, and whose completion is only prevented by the intervention of circumstances independent of the will of the offender, is, under French law, regarded as the crime itself, and punishable in the same way.

Where persons were found in possession of illicit salt, and it appeared that it was their intention to get another man into trouble by placing the salt on his premises, they were held guilty of an attempt to fabricate false evidence.—3 W. R., Cr., 59. This is a very doubtful ruling.

An attempt to commit an offence must be to do that which, if successful, would amount to the offence charged. An attempt is thus defined by Lord Blackburn in *Queen* v. *Cheeseman*. Heigh and Cave's Rep., 145:—"There is no doubt a difference between the preparation antecedent to an offence and the actual attempt; but if the actual transaction has commenced, which would have ended in the crime, if not interrupted, there is clearly an attempt to commit the crime." In *Reg.* v. *McPherson* (Dearsley and Bell's Crown Cases, 202), Cockburn, C. J., says:—"The word 'attempt' clearly conveys with it the idea, that if the attempt had succeeded, the offence charged would have been committed. An attempt must be to do that which, if successful, would amount to the felony charged."—8 C. L. R., 572.

The act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. The rule laid down in America is, that an attempt can only be manifested by acts which would end in the consummation of the offence but for the intervention of circumstances independent of the will of the party.—I. L. R., 1 All., 316.

THE

CODE OF CRIMINAL PROCEDURE, 1882.

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THE

CODE OF CRIMINAL PROCEDURE;

BEING

ACT No. X OF 1882

[*As amended by Acts III of* 1884 *and X of* 1886.]

Passed by the Governor-General of India in Council.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 6TH MARCH, 1882.)

An Act to consolidate and amend the law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882": and shall come into force on the first day of January, 1883;

Local extent.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any

special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) any officer duly authorized to try petty offences in military bazars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(*c*) heads of villages in the Presidency of Fort Saint George; or

(*d*) village Police-officers in the Presidency of Bombay;

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras.

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

A Magistrate of 2nd class, who had power to whip under Act X of 1872, cannot whip under the present Code until he is specially authorized. —I. L. R., 7 Bom., 303.

References to Code of Criminal Procedure and other repealed enactments.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such

reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts.

In every enactment passed before this Code comes into force, the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Subdivisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Interpretation-clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

'Complaint':

(*a*) 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

'Investigation':

(*b*) 'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf:

'Inquiry':

(*c*) 'Inquiry' includes every inquiry conducted under this Code by a Magistrate or Court:

'Judicial proceeding':

(*d*) 'Judicial proceeding' means any proceeding in the course of which evidence is or may be legally taken:

The definition embodies a ruling in I. L. R., 1 All., 6.

A proceeding, in which evidence is or may be taken, means "a proceeding in which evidence is or may be legally taken."—*Per* TURNER, C. J. The latter part of the definition in the old Code has been omitted "or in which any judgment, sentence, or final order is passed on recorded evidence."

'Judicial proceeding.' *Quære*—Is a preliminary police investigation a stage of a judicial proceeding? See 3 W. R., Cr., 59. See also under s. 161, *infra*, and s. 193, P. C., expl. 2.

'Writing' and 'written'

(e) 'Writing' and 'written' include 'printing,' 'lithography,' 'photography,' 'engraving,' and every other mode in which words or figures can be expressed on paper or on any substance:

'Subdivision':

(f) 'Subdivision' means a subdivision made under this Code of a District:

'Province':

(g) 'Province' means the territories for the time being under the administration of any Local Government:

'Presidency-town':

(h) 'Presidency-town' means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

'High Court':

(i) 'High Court' means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Recorder of Rangoon:

In other cases 'High Court' means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

'Chief Justice':

(j) 'Chief Justice' includes also the senior Judge of a Chief Court:

'Advocate General':

(k) 'Advocate General' includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

'Clerk of the Crown':

(l) 'Clerk of the Crown' includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

'Public Prosecutor':

(m) 'Public Prosecutor' means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prose-

cution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

'Pleader':

(*n*) 'Pleader,' used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any mukhtar or other person appointed with the permission of the Court to act in such proceeding:

'Police-station':

(*o*) 'Police-station' means any post declared, generally or specially, by the Local Government, to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer present at the Police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present:

'Officer in charge of a Police-station':

A 'Police-outpost' is a Police-station within the meaning of the Criminal Procedure Code. An Outpost should be in charge of a Head Constable, or, when such an officer is not available, of a 1st grade Constable.—Circ. No. 12, 1862.

'Offence':

(*p*) 'Offence' means any act or omission made punishable by any law for the time being in force:

'Cognizable offence':
'Cognizable case':

(*q*) 'Cognizable offence' means an offence for, and 'cognizable case' means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

'Non-cognizable offence':
'Non-cognizable case':

'Non-cognizable offence' means an offence for, and 'non-cognizable case' means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant:

'Bailable offence': 'Non-bailable offence':

(r) 'Bailable offence' means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence:

'Warrant-case'.

(s) 'Warrant-case' means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

'Summons-case':

(t) 'Summons-case' means a case relating to an offence not so punishable:

'European British subject'.

(u) 'European British subject' means—

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grandchild of any such person by legitimate descent:

'Chapter': 'Schedule':

(v) 'Chapter' means a chapter of this Code; and 'Schedule' means a schedule hereto annexed:

'Place':

(w) 'Place' includes also a house, building, tent and vessel.

Words referring to acts.

Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Trial of offences under Penal Code.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force

Trial of offences against other law.

regulating the manner or place of inquiring into or trying such offences.

4 Geo. IV, c. 81, and Reg. XX of 1825, though they give jurisdiction to the Military authorities in certain cases, do not wholly exclude the jurisdiction of the Civil as opposed to the Military Courts.—13 B. L. R., 474.

See note under s. 5, Penal Code. Also see I. L. R., 5 Calc., 124, and s. 549, *infra*.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session:
II.—Courts of Presidency Magistrates:
III.—Courts of Magistrates of the first class:
IV.—Courts of Magistrates of the second class:
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Sessions Divisions:

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Districts.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Power to alter Divisions and Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor-General in Council, the number, of such Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency-towns to be deemed Districts.

8. The Local Government may divide any District outside the Presidency-towns into Subdivisions, or make any portion of any such District a Subdivision, and may alter the limits of any Subdivision.

Power to divide Districts into Subdivisions.

All existing Subdivisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing Subdivisions maintained.

C.—Courts and Offices outside the Presidency-towns.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class, in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Magistrates of Districts are generally empowered to authorize any of their Subordinate Magistrates to entertain complaints within their competence arising within certain local limits, and from time to time to vary such orders.—Bengal Notification of 1st January 1873.

13. The Local Government may place any Magistrate of the first or second class in charge of a Subdivision, and relieve him of the charge as occasion requires.

Power to put Magistrate in charge of Subdivision.

Such Magistrates shall be called Subdivisional Magistrates.

The Local Government may delegate its powers under this section to the District Magistrate.

Delegation of powers to District Magistrate.

Under this section, Magistrates of Districts having divisions have been given the power of placing any Magistrate of the first or second class in charge of the head-quarters division, whenever they may be absent from their head-quarters.—Bengal Notification, No. 43, of 11th February 1873. See also ss. 191, 192, and Sched. IV.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such

limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

The last paragraph of this section is a modified re-enactment of s. 6 of Act V of 1861, repealed by the Schedule.

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exercisable by Bench in absence of special direction.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

A Bench of Magistrates has now power to deal with cases coming under s. 530 (now 145). Under the former Code, Benches could only *try* cases.—I. L. R., 3 Calc., 754.

In supersession of paragraphs 6 to 9 of the Notification of the 1st January last, regarding the constitution of Benches of Magistrates in certain districts of the Rajshahye, Chittagong, Dacca, Patna, and Assam Divisions, the Lieutenant-Governor is pleased to issue the following orders to have effect in all districts in which Honorary Magistrates may be appointed, and Benches of Magistrates constituted with the approval of Government:

Under the direction of the Magistrate of the District, any two or more of the Honorary Magistrates in any district may, in that district sit as a Bench in company with the Magistrate of the District, or the Subdivisional Magistrate, or any salaried Magistrate subordinate to the Magistrate of the District, exercising not less than second class powers, whom the Magistrate of the District may depute for that purpose

and any Bench so constituted is vested with first class powers in respect of offences cognizable by Magistrates of the first class, and with powers of summary trial under s. 222 (now 260) C. P. C.

2. Under the special order of the Magistrate of their district, any two Magistrates, honorary or salaried, of whom one is vested with not less than second class powers, may form a Bench with first class powers for the trial of any particular cases or class of cases specially referred to them by the Magistrate of the District. Such Bench may also exercise summary powers under s. 222, unless the order of reference is for trial in regular form.

3. Under the direction of the Magistrate of the District, any one of the Honorary Magistrates of a district may sit with any salaried Subordinate Magistrate to form a Bench, and the Bench shall, when so constituted, exercise second class powers in respect of offences cognizable by Magistrates of that class, and powers of summary trial under s. 225 of the Criminal Procedure Code; unless any member of the Bench have first class powers, in which case the Bench may also exercise those powers. If the Magistrate of the first class has summary powers under s. 222, the Bench may exercise those powers.

4. Subject to the general orders of the Magistrate of the District, any two or more Honorary Magistrates may, in their respective towns or municipalities, sit together as a Bench for the disposal of offences under Municipal or Towns Acts and the Conservancy Clauses of any Police Act, without the assistance of any salaried Magistrate, and such Bench shall exercise third class powers and powers of summary trial under s. 225 in respect of all such cases.—Bengal Notification of 6th May 1873.

Power to frame rules for guidance of Benches.

16. The Local Government may, or subject to the control of the Local Government the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Bengal Circular, No. 16, of 25th March 1880, lays down the following rules for Benches:—

1. The Bench shall try such cases as its powers enable it to try, and it is authorized to try, arising within the local limits following, or such particular cases as are made over to it by the Magistrate of the District or any Magistrate empowered to make over cases. It can only entertain of its own motion such complaints as the Magistrate of the District may authorize it to entertain both in respect of local limit and classes of cases.

[*Here enter local limits.*]

The Magistrate of the District may nominate any single member or members of a Bench, or any salaried Magistrate, to receive complaints of cases triable by the Bench, and which the Magistrates nominated

are themselves empowered to try or commit for trial. In the event of the complaint not being received by the Bench itself, the District or Subdivisional Magistrate may transfer the case to the Bench, and issue the necessary processes for bringing the accused and the witnesses before the Bench at its regular sittings.

2. The Bench shall sit at the place and on the dates mentioned below. The Honorary Magistrates will sit in the rotation arranged by the Magistrate of the District or Division, but any Magistrate not named may sit, provided he is not personally interested in the case before the Bench.

[*Here enter place and ordinary dates of sitting.*]

3. The Bench may hold one or more adjourned sittings if this be found necessary for the disposal of business or of part-heard cases: but it shall be open to the Bench at the close of its regular sitting either to apply to the District or Subdivisional Magistrate to transfer from their file any unheard cases, or to postpone them to next Bench day, as may seem most convenient.

4. The Chairman of the Bench for the time being shall be the Magistrate of highest powers present at a sitting. Where two or more are of equal powers, the Bench may elect its own Chairman, provided always that it shall be in the discretion of the Magistrate of the District to appoint the Chairman for each time of sitting, or generally.

5. The Chairman shall maintain order, conduct the proceedings of the Court, and exercise all the functions in that behalf usually exercised by a Magistrate when sitting alone. It shall be open to any member of the Bench to put any question to the witnesses, either direct or through the Chairman as the latter may deem advisable, and to suggest any matter for the Chairman's consideration.

6. Each member of the Bench shall have a voice in deciding as to the admissibility of evidence and in the finding and sentence. In a Bench of three or other uneven number of members, the opinion of the majority shall prevail. When the numbers are even, the Chairman shall have a casting vote.

7. In the trial of ordinary cases the Chairman shall generally record the evidence and judgment, but such duty may, with his consent, be performed by any one of his colleagues.

In the trial of summary cases, where the Bench has been invested with summary powers, the necessary record shall be prepared by the Chairman or one of his colleagues, or by means of the Clerk of the Court, but in every case the record must be signed by each member of the Bench who is present.

8. Any part-heard case postponed to a further sitting of the Bench may be proceeded with if any member of the Bench has been present at the previous hearing in the case, but subject to the provisions of s. 328 (now 350) of the Code.

9. The Bench may refer any point of law for the opinion of the Magistrate of the District or Division, or of any first class Magistrate appointed by the Magistrate of the District for that purpose, and the Magistrate may certify his opinion thereon.

10. When any person is convicted in an appealable case by the casting vote of the Chairman, the Chairman shall then and there ask him if he wishes to appeal, and if he desires to do so, shall forthwith record his appeal in brief, and forward the case to the Magistrate, intimating to the person convicted that he may file any grounds of appeal he pleases.

Any additional rules within the power of the District Magistrate under the section may be made by him; and, if approved by the Commissioner, need not be submitted for the sanction of Government. A District Magistrate can change the time of sitting without reference to the Commissioner.

Subordination of Magistrates and Benches to District Magistrate;

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Subdivisional Magistrate.

every Magistrate (other than a Subdivisional Magistrate) and every Bench exercising powers in a Subdivision shall be subordinate to the Subdivisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

"Subordinate to the District Magistrate." See ss. 125, 148. 167, 406, 407, 435, 437, 506, 515. As to the extent to which first class Magistrates are subordinate to the District Judge, see ss. 210, 408, 435, 437, and 520. It will thus be seen how indefensible was the ruling at I. L. R., 10 Calc., 268 (since overruled).

"Every Magistrate in a Subdivision." Where a third class Magistrate happened to be on tour in a Division of a District, and tried a case of theft, and submitted the record to the Divisional Magistrate under s. 46 (now s. 349), *held*, that he was subordinate to such Magistrate for the purposes of s. 46 (now 349).—I. L. R., 4 All., 366.

Sessions Judges in the Lower Provinces should give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their Courts, and for the preparation of copies by clerks sent by the District Magistrate,—care being taken that the records are not removed from the Judge's office.—C. O. No. 5 of 21st Sept. 1880.

District Magistrates are to comply with all requisitions for records, returns, and information made by Sessions Judges with regard to any

case appealable to them or referable by them to the High Court, whether decided by the District Magistrate or by the other Magisterial officers of the district, or made by Sessions Judges under the orders of the High Court in the exercise of their duty of superintendence over Subordinate Courts. District Magistrates are also to render any explanation which Sessions Judges may require from them, and to obtain and submit any explanation which Sessions Judges may require from Subordinate Magistrates in order to assist the Appellate Courts in respect of the three classes of cases above referred to.—C. O. No. 4 of 16th December 1876.

District Magistrates are required to maintain a watchful and intelligent control over the proceedings of their subordinates, and to inform themselves thoroughly, from time to time, of the mode in which business is transacted by them. In particular, they are expected to secure circumspection in the issue of warrants and summonses, and *to see that business is transacted with due despatch.*—C. O. No. 5 of 14th October 1879.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being, regulating the municipality of Bombay, shall lie to the Chief Magistrate only.

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code, or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justice of the Peace.

Justices of the Peace for the Mufassal.

22. The Governor-General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

"Justice of the Peace." See s. 443, *infra*. The Code which repeals Act II of 1867 does not further specify what are the powers and duties of a Justice of the Peace. Section of the repealed Act states that "they shall have power to do all other acts appertaining to the office of Justice of the Peace which, under or by virtue of any law in force for the time being, may be done by a Justice of the Peace."

Justices of the Peace for the Presidency-towns.

23. The Governor-General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India, and not being the subjects of any foreign State whom such Governor-General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor-General, the Ordinary Members of the Council of the Governor-General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

As amended by Act III of 1884, s. 1.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government;

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

27. The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Offences under other laws.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Offences under s. 19 of the Arms Act (XI of 1878), s. 15 of the Telegraph Act and s. 48 of the Post Office Act (XIV of 1866) will be triable only by a first class Magistrate. Apparently offences under s. 45 of the Railway Act would have to be committed.

The first paragraph of the section shows that the jurisdiction given to a second class Magistrate by s. 88 of the Registration Act, III of 1877 (as amended by s. 106, Act XII of 1879) is not affected. The proviso is a proviso only to the second clause, which deals with laws in which no Court is specifically mentioned.—I. L. R., Mad., 347.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District

Magistrate with power to try as a Magistrate all offences not punishable with death.

Deputy Commissioners of all districts in Chota Nagpore and Assam and also of the Districts of Darjeeling, Julpigoree, Cachar, and the Sontal Pergunnahs, have been vested with powers under this section.—Bengal Notification of 1st January 1873. See 2nd para. of s. 2, *supra*.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years and any sentence of transportation passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

As amended by s. 1, Act X of 1886.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees; Whipping.
(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

Where, under Excise Law, the Magistrate inflicted a fine of Rs. 16 per seer on a large quantity of contraband opium. and the fine exceeded Rs. 1,000, *held*, that he had not exceeded his powers.—7 W. R., Cr., 29.

A Magistrate can order confiscation under the Excise, Salt, and other Acts. But confiscation is not considered as part of the sentence or punishment. It is merely a consequence of the conviction.

See s. 260, *infra*; also I. L. R., 3 Calc., 366. See s. 446.

Power of Magistrates to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisoment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

See ss. 65-67, Penal Code.

Prisoners were convicted of 'affray' under s. 160, Penal Code, and sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for thirty days, the full term of imprisonment under that section. *Held*, that the sentence was legal.—I. L. R., 1 Mad., 277.

But *contra*, see I. L. R., 1 All., 461.

By the General Clauses Act (I of 1868), s. 5, it is enacted that "the provisions of ss. 63 to 70, both inclusive. of the Indian Penal Code, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such shall contain an express provision to the contrary."

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge.

As amended by Act X, 1886, s. 2. See s. 446.

Sentence in cases of conviction of several offences at one trial.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

The last para. annuls ruling in 1 B. L. R., A. Cr., 3.

When a person is convicted of wrongful confinement, grievous hurt, and theft, he may be punished with imprisonment for the first two offences, and with whipping for the theft.—7 B. L. R., 165.

Where a person, who is accused of several offences of the same kind, is tried for each of such offences separately by a Magistrate, the aggre-

gate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict.—I. L. R., 3 All., 305. In this case the Magistrate tried three offences separately, and sentenced the accused to two years' imprisonment for each offence, or six years in all.

See notes under s. 235, C. P. C. Where prisoner was found in possession of several seals of different persons with intent to commit separate forgeries, *held*, that separate sentences might be inflicted.—13 W. R., Cr., 16.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Subdivisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their 'ordinary powers.'

See notes under s. 4, Act V, 1861.

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers, any Subdivisional Magistrate or any Magistrate of the first, second or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrates' investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may by order empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

When a Magistrate of the second class is, during a trial, invested with first class powers, he may pass such sentence as a Magistrate of the first class is empowered to pass.—I. L. R., 7 All., 414. See I. L. R., 6 Calc., 476, as to hearing of an appeal from a second class Magistrate, who, on the day he decided the original case, had actually been gazetted with first

class powers, but such notification had not reached him. *Held*, that the appeal was properly heard by the District Magistrate.

Continuance of powers of officers transferred.

40. Whenever any person hoding an office in the service of Government, who has been invested with any powers under this Code throughout any local area, is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

The petitioner had been convicted by Mr. Carnegy, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction under s. 222 (now 260) of Act X of 1872. This Officer was, in the year 1872, in charge of the Jorehat Division in the District of Sibsaugor, "with first class powers, and powers under s. 222." In 1874, he proceeded on furlough to England; and, on his return in 1875, was posted to the District of Kamroop, and invested with the powers of a Magistrate of the first class. *Held*, that s. 56 (now 40) did not apply, and that Mr. Carnegy had no summary jurisdiction in Kamroop.—I. L. R., Calc., 117.

It was held, that the Government had "otherwise directed"; for the first order had vested him with summary powers in a certain District only, and, on his return from furlough, he was vested with the powers of a Magistrate of the first class.

When officers return from furlough, it is not necessary to gazette them with special powers which they exercised prior to their going on furlough.

Powers may be cancelled.

41. The Local Government may withdraw any powers conferred under this code on any person by it or by any officer subordinate to it.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

"Bound to assist." Intentional omission to give assistance is punishable under s. 187, Indian Penal Code.

In France and Belgium, it is a police contravention of the second class to refuse to give aid in cases of accidents, fires, &c. Such refusal would not be punishable in India.

"Reasonably." Section 220 of the Louisiana Penal Code imposes the obligation on "free able-bodied male persons above 18 years of age and under 50."

The French law merely uses the words "being able to render assistance;" the German Code, which is more definite and precise, adds the words "without exposing themselves to serious danger." In India, where it is very necessary to extend the obligation to cases of fire, the qualification in the German Code should be adopted. See the cases noted in my "Comparative Criminal Jurisprudence"

Aid to person other than Police-officer, executing warrant.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

It will be observed that a private person is not bound to give information of theft. He is not bound to proceed against the thief, but it is an offence to take a gratification in consideration of his not proceeding. See notes under s. 214, P. C, and s. 345, *infra*, where it is discussed whether, without any unlawful composition, charges of theft, criminal breach of trust, &c., may be *withdrawn*.

Village headmen, landholders and others bound to report certain matters.

45. Every village headman, village watchman, village Police-officer, owner or occupier of land, *and* the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit any, non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

EXPLANATION.—In this section 'village' includes village-lands.

The duty imposed by this section on village headmen, &c., of giving information as to the occurrence of any sudden or unnatural death, is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, &c.

"Occupier of land." It was ruled under s. 90 of the 1872 Code, that residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section.—23 W. R., Cr., 60.

The provisions of s. 90 (now 45) should not be put in force against one who has omitted to give information to the Police of an offence having been committed in cases where the Police have actually obtained such information from other sources.—I. L. R., 4 Calc., 623. Of course, it is necessary that the information should have been received in due time. If there are several chowkidars in a village, they are all equally bound to inform. But if one has informed, it is not necessary that all should do so. In the case above quoted it appears that, as a matter of fact, the accused, who was convicted under s. 176, Indian Penal Code, only got information of the theft on the fourth day after its occurrence, and, in the meantime, an account of the theft had been duly reported by another gomasta and a punch of the village.

As to duties of chowkidars in villages where the Chowkidari Act is in force see Act VI of 1870, B.C., s. 39. See also s. 41 as to duties of

punchayets. As to villages where Chowkidari Act is not in force, see Reg. XX of 1817, s. 21.

A khazanchee is not an agent within the meaning of this section. A dewan may be an 'agent' if his master is absent, but the provisions of s. 90 (now 45) do not apply to a dewan who is acting only under the orders of his resident master.—I L R., 4 Calc, 603.

The new law substitutes "*and* the agent," for "*or* the agent," so that this ruling is perhaps no longer applicable. The words "or is agent" have been inserted in cl. (*a*).

Under former Code the liability of the resident agent of an owner only arose when the owner was not resident, and had no personal knowledge of the fact required to be reported. Under the present section the agent may be liable, though the owner be in the village.—23 W. R., Cr., 60

As to the words "the occurrence *therein*" in cl. (*d*), it is not necessary, to support a conviction for not giving information under s. 176, P. C., to show that the death actually occurred on the land of the accused. It is sufficient that the body is found on the land under circumstances denoting that the death was sudden, unnatural, or suspicious. The Court may infer that the death took place there.—I. L. R., 11 Calc., 619.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

See s. 99, P. C., and s. 80, *infra*.

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in

charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Breaking open zenana.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons

53 The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When Police may arrest without warrant.

54 Any Police-officer may, without an order from a Magistrate and without a warrant, arrest—

first—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exsists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody, and

sixthly — any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the Police in the towns of Calcutta and Bombay.

"Arrest without a warrant." See also ss. 55, 57, 149, 151, 152. The words 'prevent' and 'interpose' necessarily include the power of arrest, if the offence cannot be otherwise prevented.

Chowkidars, under Act VI of 1870, B.C., *shall* arrest for murder, rape, dacoity, robbery, mischief by fire, grievous hurt, theft, house-breaking, counterfeiting coins, and riot, if committed in their presence.—See s. 39 and Sched. B.

Any wilful excess of a Police-officer of his legal powers of arrest is punishable under s. 220, Indian Penal Code.—7 W. R., 3.

In an Allahabad case it has been held, that village chowkidars are not Police-officers —I. L. R., 3 All., 60. It was held, that a chowkidar is not legally bound, as public servant, to apprehend a person accused of committing murder outside the village of which he is chowkidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder. See Act XVI of 1873 for N. W. P. But in Bengal, Reg. XX, 1817, s. 21, imposes wider duties on chowkidars. Reg. XX, 1817, s. 21. para. 7. speaks of village watchmen neglecting their duties *as Police-officers*. It must have been intended by the Legislature that village watchmen should have larger powers of arrest than private persons. See note under Reg. XX, 1817, s. 21, *infra*. The law regarding village chowkidars is now uncertain, and requires amendment.

In Madras, it has been *held* that village watchmen (Taliáris and Tottis) are not Police-officers, and therefore cannot arrest if the offence be not committed in their presence.—I. L. R., 3 Mad., 22 ; *Queen* v. *M. Sinnadu Padiyachi* (Weir. p. 66) followed.

Can a Police-officer arrest to prevent injury to property under ss. 426, 427, P. C.? Section 42 (*b*), *supra*, speaks of "public property." But, under s. 23. Act V of 1861, a Police-officer is bound to prevent the commission of *offences*, and in many cases the commission of mischief could only be prevented by arrest. In England, the owner of property or his servant may arrest to prevent injury to his property, and may take the offender before a Justice (24 and 25 Vic., c. 97, s. 61).

"Implement of house-breaking." A house-door key or a pair of pincers is an implement of house-breaking, as it may be used for such purpose. See 24 and 25 Vic., c. 96, s. 58, and *R.* v. *Oldham*, 2 Doct, 472.

Police may arrest under s. 283, P. C., for any act causing danger, obstruction or injury in a public way.

Arrest of vagabonds, habitual robbers, &c.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which affords reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

This section applies to the Police in the towns of Calcutta and Bonbay.

The last para. is added by s. 3, Act X of 1886.

Under this section and s. 60, the Police can bring the arrested person before a Magistrate, and are then *functi officio*. Under ss. 109, 110, it is for the Magistrate to decide whether he will call for security. The Police cannot submit an A Form in such cases.

Police Darogahs are required to arrest and send before the Magistrate wandering or dangerous lunatic. Act XXXVI of 1858, s. 4.

Procedure when Police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

This section applies to the Police in the towns of Calcutta and Bombay.

The last para. is added by s. 3, Act X of 1886.

Refusal to give name and residence.

57. When any person in the presence of a Police-officer commits, or is accused of committing, a non-cognizable offence, and refuses, on demand of a Police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Pursuit of offenders into other jurisdictions.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses, on the demand of a Police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Quære.—Is a chowkidar a Police-officer for purposes of this section? See note under s. 54. *supra.*

The powers of private persons to arrest are far wider in England and America than in India. See notes under this section in my "Comparative Criminal Jurisprudence."

Person arrested to be taken before Magistrate or officer in charge of Police-station.

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Person arrested not to be detained more than 24 hours.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a

Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Police to report apprehensions.

62. Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

'Shall.' Police-officer failing to observe the provisions of this section can be punished under s. 176, P. C, and might also be punishable under ss 166, 217, *id.*

Discharge of person apprehended.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may, thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest in his presence within the local limits of his jurisdiction of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Summons by whom served.

Such summons shall be served by a Police-officer, or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the Police in the towns of Calcutta and Bombay.

Rules framed by the High Court under cl. (2), *s.* 20 *of Act VII*, 1870.

The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, namely:—

		Rs.	As.	P.
(1)	Warrant of arrest—			
	For the warrant in respect of each person named therein	1	0	0
(2)	Summons—			
	For the summons in respect of one person, or of the first two persons residing in the same place ...	0	8	0
	In respect of any additional person named therein ...	0	4	0
(3)	Proclamation for absconding party under s. 171 of the Code of Criminal Procedure—			
	For the proclamation	2	0	0
(4)	Proclamation for witness not attending (s. 353)—			
	For the proclamation	0	8	0
(5)	Warrant of attachment—			
	For the warrant	1	0	0
	When it is necessary to place officers in charge of property attached, for each officer so employed, per diem	0	4	0
(6)	In cases where an application is made by a complainant for the recovery of costs awarded under s. 31 of Act VII of 1870 or of compensation granted under s. 308, Code of Criminal Procedure, or where the defendant applies for the recovery of compensation awarded to him under s. 209 of the Code of Criminal Procedure—			
	For the warrant for the levy of the fine or compensation	0	8	0
(7)	Written order—			
	For the order	1	0	0
(8)	Injunction*—			
	For the injunction	1	0	0
(9)	Notice—			
	For the notice	1	0	0

* Injunctions in proceedings not connected with *offences* are not chargeable.

No fee shall be chargeable in advance on any process of a Criminal Court in any case where the prosecution is on the part of Government, but it shall be competent to any Magistrate in such case, if the accused is convicted, to order that such fees shall be paid by the accused or any of them, in like manner as if such fees had been paid by the prosecutor in the first instance.—Calc. Gazette, 2nd April, 1879.

No fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, or warrants of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done, or words spoken, in contempt of its authority.—High Court Cir. Orders, p. 96.

Summons how served.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Refusal to sign a receipt would be punishable under s. 173, P. C. See notes under that section.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in

which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Whenever a summons to appear as a witness in a criminal case is issued against an officer of Police, it shall be served upon such officer through the Superintendent of the District, or the Assistant in charge of the Subdivision to which such officer may belong.—C. O. No. 14, of 6th December 1866.

All summonses on medical subordinates at Subdivisions must be served through the Magistrate or other executive head of the district, in order to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their medical duties during their absence.—C. O. No. 1, of 10th January 1868.

Whenever it may be necessary to summon an officer or soldier in military employ to attend a Civil or Criminal Court as a witness, the process-server, who is to serve the summons, must be instructed to take it under cover to the Officer in command of the Regiment or Detachment with which the witness may be serving, and to apply for his assistance in serving it.—C. O. No. 24, 24th June 1878.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Warrants of arrests issuing out of a Magistrate's Court should be written "in the language in ordinary use in the district in which it is held,"—that is to say (with certain exceptions), the language in which the proceedings of the several Courts are conducted. But where a warrant is sent for execution to the Magistrate of a District where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language, or into English. Moreover, in such cases it should be proper that the warrant should always be accompanied by a letter in English requesting its execution.—C. O. No. 3, of 25th July 1876.

Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate

execution is necessary, and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, &c.

78. A District Magistrate or Subdivisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or subdivision for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to Police-officer.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

The Code says nothing as to time of execution. It has been held by the High Court (1 B. L. R., App. Cr., 17), that the Lord's Day Act does not extended to criminal cases in British Burmah.

But it is difficult to see what the Lord's Day Act has to do with it. By 11 and 12 Vict., c. 42, s. 4, a warrant may be executed on a Sunday; and it may be executed in the night time as well as during the day.—9 Rep., 66 *a*.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

Warrant directed to Police-officer for execution outside jurisdiction.

84. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the Police in the towns of Calcutta and Bombay.

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself, so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

The proclamation procedure may now be adopted in summons as well as warrant cases.

The thirty days counts from the date of publishing the proclamation. This was ruled under s. 171 of the former Code.—10 B. L. R., App., 14.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

As amended by s. 4, Act X of 1886.

Property declared to be at the disposal of Government can only be restored by Government.—18 W. R., Cr., 34.

The Code makes no provision for investigating the claims of third persons. The claimants may bring a suit in the Civil Court against the purchasers to establish their rights.—7 W. R., Cr., 54; 17 W. R., Cr., 10 But, as a matter of fact, Magistrates do investigate the claims of third parties, and it would be very hard sometimes on claimants belonging to a joint family, if this were not done.

After the date of the attachment by the Magistrate, no title can be conferred by an attachment subsequently made by a Civil Court.—I. L. R., 9 Calc., 861.

The forfeiture is not merely in furtherance of a matter of procedure. It is a mode of punishment for contempt of process. See s. 89. The Legislature altered the wording of the 1862 Code, in consequence of Phear, J., having misinterpreted their intention in 10 B. L. R., App., 14. Phear, J., thought that the property ought not to be forfeited if the man came in. But if this were so, there would be no benefit in the procedure.

Proceedings of a Magistrate under this section are not "judicial proceedings" under s. 4 (*d*) of the Code, and are not liable to revision by the High Court.—I. L. R., 6 All., 487. See s. 405, *infra*.

The Board of Revenue have, at the instance of the Court, issued the following instructions (*vide* Board's C. O. No. 9, of July 1878) to Collectors, in connection with the attachment and sale under s. 172 (now 88) of the Criminal Procedure Code, of land paying revenue to Government:—

The High Court have represented that Collectors of Districts who hold sales of land paying revenue to Government from time to time could more conveniently and advantageously hold sales of such attached land as is above referred to, situated within their jurisdictions, than could Magistrates, especially in cases where the Magistrate is in another Dis-

trict. The Board, therefore, direct that Collectors will, in future, comply with the requisitions of Magistrates to hold sales in such cases; and it is further directed that, in these cases, the procedure in respect of advertisement, sale, and delivery of possession, in the case of sales in execution of Civil Courts under the Code of Civil Procedure may be strictly followed.—C. O. No. 7, of 17th August 1878.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such

officer may require such person to execute a bond with or without sureties for his appearance in such Court.

"A bond with or without sureties." Under the former Code, only personal recognizances could be taken from witnesses. This section apparently authorizes the taking of security, but see Sched. V, forms 2, 3, 7, 26, &c. Forms 7 and 26 (relating to witnesses) contain no security endorsements. See also s. 171 (2nd para.) and s. 217, *infra*, which speaks of "bonds" only. Section 86 refers to accused persons only. Section 76 refers to witnesses also; but the question is, whether, when once a witness has appeared, he can be made to give bail for reappearance.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed, to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

Unstamped and insufficiently stamped documents shall be admitted in evidence in any criminal proceeding other than proceedings under chap. xi (now chap. xii) relating to possession.—Act I, 1879.

Under this section a Court can call for the special diaries of a case under s. 172, C. P. C., and also for statements of witnesses recorded under s. 161.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person.

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith, and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, &c.

98. If a District Magistrate, Subdivisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of Persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Subdivisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magis-

trate who shall make such order as in the circumstances of the case seems proper.

This section is new. See also s. 551, *infra*.

D.—General Provisions relating to Searches.

Direction, &c., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under the section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

Are the two respectable inhabitants legally bound to attend? It would have been well to insert the words 'they shall be bound to attend' See s. 175, *infra*. But their liability to attend may be inferred from the proviso that they shall not be bound to attend the Court as witnesses.

E.—Miscellaneous.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Subdivisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

See ss. 108, 349, *infra*, as to procedure to be adopted by second or third class Magistrates, when they think that the accused or any person ought to be required to execute a bond.

The Magistrate of a District, when exercising the powers of an Appellate Court, is competent to make an order under s. 106 of the Criminal Procedure Code, requiring the appellant to furnish security for keeping the peace.

On a conviction for criminal trespass under s. 447, Penal Code, the Joint Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 489 (now 106) for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—20 W. R., Cr., 87.

Where a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not, nevertheless, proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law.—1 C. L. R., 134; and also 3 *ibid*, 406.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

"Wrongful Act." This amendment follows the ruling in 10 B. L. R., 441. Where the act is not in itself unlawful, an order may be passed under s. 144. See notes under s. 144, *infra*.

A was in possession of an estate. B got a certificate under Act XXVII of 1860, and proceeded to the village and induced a number of the ryots to give him kabuliats. The High Court held that, until there had been a yielding up of possession by A, anybody coming forward to take the property without the sanction of the Civil Court is, as far as

the Magistrate is concerned with him, in the position of a trespasser. They also hold, that the Magistrate had illegally given possession to B, the stronger party, under s. 530 (now 145). See notes under s. 145, *infra*. They remarked:—"It is very possible that a breach of the peace was imminent, but in order to prevent that breach of the peace, the proper course was to bind B in heavy recognizances to maintain the peace, and not to oust the person whose possession was undoubted." When two persons are disputing about land, the Magistrate should bind down the person who appears to him to be out of possession, *or obviously in the wrong*.—I. L. R., 4 Calc., 417.

Under this section a Magistrate ought to maintain possession—21 W. R., Cr., 3. The petitioner, a tahsildar, applied to the Police for assistance to protect him while distraining the crops of certain ryots for arrears of rent. On this being reported to the Magistrate, he required the petitioner to furnish security to keep the peace, on the ground that any riot which might result from the resistance of the ryots to the attachment of their crops would be attributable to his act. This order was set aside by the High Court as illegal, because the Magistrate had not found that the petitioner himself was likely to commit a breach of the peace.—3 C. L. R., 280.

An order postponing proceedings instituted under s. 491 (now 107) until the person called upon to show cause shall have established in a Civil Court the title claimed by him to the property disputed, with reference to which there is a likelihood of a breach of the peace, amounts to a discharge—5 C. L. R., 366.

The report of a Subordinate Magistrate is information on which a competent Magistrate can act.—2 Mad. H. C., 240. So, of course, is a Police report.

A non-resident zemindar cannot be bound over to keep the peace because his local agents are committing acts likely to cause a breach of the peace.—10 C. L. R., 480. A Magistrate has no jurisdiction to take proceedings under s. 107 against a person not personally within his jurisdiction.—I. L. R., 6 All., 26; 11 Calc., 737; 12 Calc., 133. I submit that these rulings are not sound interpretations of the law. It appears from the report of the last case that the petitioner never went to his zemindari, where breach of peace was apprehended. Wilson, J., appears to have rejected the wider construction, because "it would empower any Magistrate in any part of India to require on *ex parte* information the attendance of any person from any part of India." If the law gives too wide a discretion to Magistrates, it may be altered; a narrow construction should not be adopted on the supposition that Magistrates will not use their discretion properly. A zemindar in Calcutta may abet and even organize and direct a disturbance in his zemindari in the Jessore district. Suppose the *ex parte* information took the shape of a complaint. Under ss. 154, 155, or 156 of the Penal Code, the Magistrate might summon the zemindar. I think this fact proves the soundness of my contention. The Government of India have been asked to legislate so as to nullify the effect of the above rulings.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of

the peace, and that such breach of the peace cannnot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may, in his discretion, detain such person in custody until the completion of the enquiry hereinafter prescribed.

This section is almost entirely new. Note that the Magistrate before whom the person is sent may detain him in custody until the completion of the inquiry.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

See ss. 55, 60, *supra*, under which Police-officers can arrest vagabonds, &c., and place them before a Magistrate. See notes under this and following sections in my "Comparative Criminal Jurisprudence," in which it is shown that the idea (shared even by some High Court Judges) that these sections are unusual or exceptionally stringent, is quite erroneous. The Indian law is less stringent than the English, and far less so than the continental law *in pari materiâ*. It is unfortunate that many Indian Judges, whose scanty knowledge of the Indian Codes is excusable or rather intelligible, should at the same time have only a superficial acquaintance with the English Criminal Law. A thorough knowledge of English Criminal Law goes far to counteract a deficient acquaintance with the Indian Codes and Indian case-law.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, or Subdivisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the

Local Government, receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property, knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

As amended by s. 5, Act X, 1886. It is now made clear that the words 'specially empowered' refer only to Magistrate of the first class. Subdivisional Magistrates, *as such*, are empowered under this section. See Circ. 13, J. D., June 15th, 1883.

Security for good behaviour cannot be demanded as part of an order on a conviction. A separate proceeding should be drawn out by the Magistrate, stating that from the evidence adduced before him in the case, he is satisfied that the offender falls within the terms of s. 110, C. P. C., and therefore that security will be required from him,—I. L. R., 1 All., 666; 9 Calc., 215. *But it does not appear to be necessary to record any fresh evidence.* The order can be passed on, and is justified by, the evidence recorded in the case. All that the Allahabad Court ruled was that a separate proceeding should be drawn out.

A person who has been incarcerated and released under this section cannot again be imprisoned except for bad behaviour subsequent to his release.—6 W. R., Cr., 18. The powers given by ss. 505 and 506 (now 110) should be exercised with extreme discretion. The former of these sections is not intended to apply to persons of "by no means a reputable character." An order requiring persons to deposit cash in lieu of entering into a bond as security for their future behaviour is bad in law.—I. L. R., 6 Calc., 14. The object is the prevention, and not the punishment, of crime. When a charge of a specific offence is under trial, proceedings for bad livelihood should not be instituted.—I C. L. R., 268; I. L. R., 2 Calc., 110, followed.

The Madras High Court, in a late case under this section, gave judgment as follows: "There was evidence as to general character, from which the Magistrate was at liberty to find that the petitioners were *by repute* dangerous characters. Although, when witnesses are examined as to *general character*, their testimony is not of much value as to the habits of a suspected person, unless they can, in support of their opinion, adduce instances of the misconduct imputed, yet, when the question is only as to his *repute*, the evidence of witnesses, if reliable, is not without value, though they may not be able to connect the suspected person with the actual commission of crime. The power given by s. 505 (now 110), is one which should always be exercised with nice discretion by the Magistracy, but its exercise is not to be confined to cases in which positive evidence is forthcoming of the commission of crime by the persons against whom it is sought to enforce the law. The power is a preventive, and not punitive power. There is no illegality in the pro-

ceedings which necessitates interference with the Magistrate's order."—I. L. R., 3 Mad., 238. The words "*habitual* robber, thief, &c." are substituted for "by *repute* a robber. &c." in the former Code. But see 2nd para. of s 117, *infra*, which enacts that the fact that a person is an habitual offender may be proved by evidence of *general repute or otherwise*.

Deputy Magistrates, in charge of Subdivisions, are somewhat prone to demand security on insufficient evidence. The evidence offered in bad livelihood cases generally falls under some or more of the following heads:—

1. A. B. has been previously convicted.
2. His house has been searched many times.
3. Occurrence of many thefts in the vicinity.
4. His expenditure exceeds his ostensible income.
5. He is a debauchee, has a kept-woman, drinks wine, or consumes intoxicating drugs.
6. Frequent absence from home, such absence being unexplained or falsely accounted for.
7. He is by repute a thief, and when a theft occurs, the neighbours suspect him.

When a man has once been convicted, his house is searched as a matter of course on the occurrence of any theft. Such a fact is of no importance; nor the occurrence of thefts in the vicinity, unless there is some presumptive evidence to connect him with the theft, such as proof of absence from home on the nights in question. Evidence of expenditure is not without value, when it clearly far exceeds ostensible income. But the most important and reliable evidence is that which falls under heads (6) or (7). Security may well be taken, when a man is shown to have been away from his village for a month, and his account of his whereabouts and doings is tested and proved to be totally false. Owing to the absence of good detective agency, such evidence is seldom offered. As has been remarked by the High Court, evidence of mere repute is not without value. It may amount to certainty, as in the case of certain criminal tribes or castes, the male members of which are always in their huts or encampments on moonlight nights, but absent on dark nights, while a search always discloses the possession of valuable utensils and articles of such a nature (*e. g.*, pots of delicate preserves, pickles, &c.) as are only found in the houses of well-to-do persons. Much weight should be attached to the evidence of respectable villagers, who can give good reasons for suspecting any particular person. For instance, a ryot with a small holding is suspected by his zemindar and others of receiving stolen property. Bad characters are seen to visit him at or after evening. He is building a *pucca dalan*, but can't explain how he got the money to do so. Such evidence is certainly strong, when combined with reliable and satisfactory evidence of repute.

There is no rigid rule that bad livelihood cases should be tried in the village. It may in many cases be advisable to do so, but at the same time there are many cases in which there could be no possible necessity for such a course, and to do so would only be a needless waste of the Magistrate's time.

It is a great pity that the words "dangerous character" have been omitted in the present Code. Under the former Code, proceedings could be taken against professional cattle-poisoners, professional incendiaries, professional forgers, and generally against those pests of village society known as "torneys," or case-mongers. These latter may still be proceeded against, if it can be shown that they habitually commit extortion

by threatening to bring cases, or to report social scandals to the police, &c., or generally by inducing and fomenting litigation.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Order to be made.

112. When a Magistrate, acting under section 107, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

If the person fails to attend on a summons duly served, a warrant should issue (see s. 90, *supra*); the order for security cannot be passed *ex parte*.—1 C. L. R., 48.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such

summons or warrant to the person served with, or arrested under, the same.

A defect in the summons is not a ground for setting aside the order, unless the person called on to give security has been prejudiced by such defect.—I. L. R., 3 All., 545. *Quære.*—Would an omission to send a copy of the order under s. 112 be fatal? Under s. 492 of the former Code, the substance of the report or information was entered in the summons itself. It has been held that the words of that section are directory, and not imperative, and an omission to insert in a summons under that section the amount of the recognizance and security required will not invalidate any subsequent proceedings binding over the parties to keep the peace.—I. L. R., 8 Calc., 724; 15 W. R., Cr., 43.

The sole point for decision in this and similar cases is, whether the persons proceeded against have or have not been prejudiced by the omission. Field, J., said: "It has generally been considered that where the prescriptions of a Statute relate to the performance of a public duty, they are to be understood as instructions merely for the guidance and government of those on whom the duty is imposed; in other words, they are to be considered as directory merely, and not imperative." Wilberforce on Statutes says: "When Statutes provide that things shall be done in a certain manner, such a provision is usually considered directory, unless the Legislature has used negative words or other words showing an intention to treat the manner of performance as essential to the validity to the act, or unless the Statute confers a special authority which must be strictly followed." So it will be found in the French Code d'Instruction Criminelle, that wherever the Legislature intend a certain procedure to be imperative and absolutely essential, they prescribe it "*à peine de nullité*," that is, if the procedure be not followed, the proceedings are void. But the Court of Cassation have held that, when the above words are not used, orders cannot be upset on the ground of non-conformance with prescribed procedure. The equivalent of the French "*à peine de nullité*" provision is to be found in s. 530, C. P. C., which gives what is apparently intended to be an exhaustive list of irregularities which vitiate proceedings. See ss. 529, 531—538. Moreover, even in these cases, where procedure prescribed "*à peine de nullité*" has not been observed, the Court of Cassation do not let off the accused altogether, as High Courts in India frequently do. They merely order fresh proceedings on a retrial to commence from *the oldest* informal act.—C. I. C., 408. Moreover, the Court of Cassation have ruled that they have no jurisdiction to notice any flaws in the procedure prior to the actual commencement of the trial (des actes anterieurs à l'arrêt de renvoi et de mise en accusation). See notes in my "Comparative Criminal Jurisprudence," under ss. 435, 437, 439, C. P. C.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

"Pleader." See s. 4 (*n*), *supra*.

Inquiry as to truth of information.

117. When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section, the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

The party who is called upon to show cause why he should not be bound down to keep the peace is not entitled to an adjournment in order to produce his witnesses. He must either bring his witnesses with him, or apply for summons in such time as to enable him to bring them into Court on the day fixed.—23 W. R., Cr., 9. But see s. 540, "and the Court *shall* summon any such person, if, &c."

A Magistrate is not competent to require persons to give security to keep the peace until he has adjudicated on evidence taken in their presence, that they have, by their conduct, rendered this necessary.—3 C. L. R., 72.

"No charge need be framed." It was necessary to make this clear, as it had been ruled that a person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him.—1 C. L. R., 130. Bail should be given. A Magistrate is not competent to refuse bail, unless the law sanctions such refusal.—1 C. L. R., 130.

Order to give security.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or

for a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Apparently there is no appeal from an order for security to keep the peace. But see ss. 124, 125, *infra*. An appeal lies to the District Magistrate against orders to furnish security for good behaviour. See ss. 404, 406, *infra*. Where a District Magistrate himself passes such an order, there is no appeal to the Court of Session. See s. 408, *infra*. An order to give security for good behaviour is not a conviction. The Court of Session has jurisdiction only when security is demanded for a period exceeding one year (s. 123).

Notwithstanding that a person has been bound down to keep the peace for a stated period, a Magistrate has power to increase the amount of the security required before the expiry of that period.—18 W. R. Cr., 58.

India Notification, No. 1431, dated 27th March 1880, remits fees on security-bonds.

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case, the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

See s. 514, *infra*.

It is not necessary to establish the actual commission of an offence. All that it is necessary to show is, that some act was done which was likely, in its consequences, to provoke a breach of the peace, and it is not material to consider whether the person bound did the act himself with his own hand, or, as in this case, made use of other persons to do it.—I. L. R., 2 Mad., 169.

When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not, nevertheless, proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law.—1 C. L. R., 124; and also 3 *ibid*, 406.

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Under this section, a Magistrate might refuse to accept mokhtars or other professional sureties.

Imprisonment in default of security.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant

directing him to be detained in prison, pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some Subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Subdivisional Magistrate, or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or Police-officer.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the Police in the towns of Calcutta and Bombay.

"Officer in charge of a Police-station." See s. 550, *infra*, and s. 4 (*o*), *supra*. See I. L. R., 7 Bom., 42.

See notes under s. 42, *supra*, and s. 141, Penal Code.

It has been ruled in England that the use of a highway is confined, both by statute and by common-law, strictly to the one primary use of a place of passage, and is not for stationary employments.—*R.* v. *Carlile*, 6 C. and P., 637; *R.* v. *Moore*, 3 B. and Ad., 184. All other uses than that of travelling are deemed abuses.

"It is contended that there was no assembly, that there were merely these three persons (Messrs. Tucker, &c, of the Salvation Army), who were followed by about 50 or 60 people. For the meaning of the term assembly' we are referred to Webster's Dictionary; and it has been suggested that if persons walk along with other persons, they would not be regarded as an assembly. To take the commonsense view of the matter, it seems perfectly clear that the action of these three persons was calculated to draw a crowd—the very object of it was to do so; and, therefore, these persons who were with them, be they stationary or be they moving, constituted an assembly of five or more persons."—*Per* KEMBALL and PINHEY, JJ., in *Salvation Army case*—Bombay, Sept. 28. 1882, I. L. R., 7 Bom., 42.

"The question which remains is, whether this assembly was likely to cause disturbance to the public peace. We are told that mere opinion is not evidence, and ought not to have been received; but, in cases of this kind, certainly the evidence of the Police, who are in a position to know the people, is valuable, and even the Magistrate himself may look to all the surrounding circumstances, and come to a conclusion whether or not the acts committed were likely to lead to a breach of the public peace."—*Per* KEMBALL and PINHEY, JJ., as above. In the same case, in the course of argument with counsel, PINHEY, J, said: "If you are not to wait till a row has occurred, what evidence are you to have that there is a probability of a row, but an opinion?"

In England, an unlawful assembly is one of three or more persons assembled with intent to commit a crime by open force, or with intent to carry out any common purpose, *lawful or unlawful*, in such manner as to afford reasonable grounds for apprehending a consequent breach of the peace.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present, may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or, as it may be necessary, to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of Commissioned Military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Subdivisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandize, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandize, or owning, possessing, or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance ; or

to suppress or remove such trade or occupation ; or

to remove such goods or merchandize ; or

to prevent or stop the construction of such building ; or

to remove, repair or support it ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A 'public place' includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

"Any way, which is or may be lawfully used by the public." The word 'public' includes *any class* of the public or any community (s. 12, Penal Code). See 6 C. L. R., 282, and note under s. 31, Act V of 1861. A right of way may be either *iter* (foot-way and bridle-way), *actus* (drift-way for cattle), or *viâ* (way for carriages, &c.) In Scotland, the servient owner may alter the course of a road (if equally convenient to the dominant owner) ; but in England and India (Easements Act) he cannot. "A private right of way, confined to a *few individuals*, is called an easement; but *every way* (foot-way or otherwise), *which is common to the public, is called a high-way*."—Paterson, English and Scottish Law, p. 95, and cases there quoted. Infringement of easements is dealt with under s. 147, *infra*. See definition of 'road' in Municipal Act. All that is now necessary is that the Magistrate should be satisfied that the way is or may be lawfully used by the public. Even under the former Code, in which the word 'thoroughfare' was used, it was held, that although a road may be a private one, an order may be made under this section if it appears that s. 147 applies to it,—that is, if it is open to the use of a certain class of persons (for instance, a path to a bathing-ghat used by females only).—17 W. R., Cr., 33 Where defendant alleges that the way is not open to the use of the public, the Magistrate must go into that point first, and has jurisdiction to decide it just as Justices have in England. The mere fact that the plea is raised does not oust his jurisdiction.—I. L. R., 5 Calc., 875.

A Civil Court is not competent to set aside the order of a Magistrate made under s 521 (now 133), Criminal Procedure Code, on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 521 (now 133) by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them.—I. L. R., 6 Calc., 291. But it is doubtful whether the Civil Court could upset a finding that there is a right of way, as that fact is found by a Magistrate before he makes any order, and an order duly made cannot be called in question in any Civil Court.

Beng. Act III of 1864, which vests public highways in Municipal Commissioners for the purposes of the Act, does not, by so vesting them, give power to the Municipal Commissioners, or *à fortiori* to the Vice-Chairman alone, to stop up or divert such public highways. If any road has been so stopped up, the order should be treated as a nullity in proceedings taken under s. 521 (now 133).—I. L. R., 2 Calc., 425.

A public road includes a fair margin on either side of the road, which may be used for various purposes in connection with the road itself.—7 C. L. R., 272.

The fact of a Magistrate taking action under s. 521 (now 133) is *primâ facie* sufficient to show that he considers the *locus in quo* to be a thoroughfare or public place, and if no objection is taken that it is not such, and the jury find that the order made under that section is reasonable and proper, the High Court will not interfere. In the case reported at I. L. R., 5 Calc., 875, the fact of the place being a thoroughfare was disputed, and it was therefore held that the Magistrate ought to have tried that point first. When such point is not raised, and the jury's report contains a finding that the place is a thoroughfare, such finding should be regarded as mere surplusage.—8 C. L. R., 399.

The condition and the conduct of an old-established slaughterhouse was proved to be, in fact, an offensive nuisance and dangerous to the health of neighbours; but the evidence did not show it was in a worse condition than at any time since its establishment; the occupiers, when summoned, declined to ask for a jury. *Held*, the Magistrate was justified in suppressing the "trade or occupation." No length of enjoyment can legalize a public nuisance.—7 B. L. R., 499. In this above case the slaughterhouse was carried on under a license. The Judges referred to the remark of Lord Tenterden in *Rex.* v. *Cross* (2 C. and P., 284): "The license will not entitle the defendant to continue the business one hour after it becomes a public nuisance to the neighbourhood."

Where a Magistrate has ordered the suppression of a trade or occupation as a nuisance and injurious to the health of the community, the High Court will not interfere, unless they find either (i) that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or (ii) that the cause shown was such as ought to have satisfied the Magistrate that his order was not reasonable and proper. The Court take the findings of fact by the Magistrate to be correct, unless they see that there is not on the record *any* evidence to warrant such findings.—7 B. L. R., 516.

When an application is made under s. 133, C. P. C., calling on a person to remove an obstruction, and such person *bonâ fide* raises a question of title, *held*, that the case then becomes one for a Civil Court. The section contemplates only an inquiry as to the existence or non-existence of the obstruction complained of, not an inquiry into *disputed* questions of title.—I. L. R., 12 Calc., 137, following I. L. R., 11 Calc., 8. Magistrates should not be misled by these two doubtful rulings. In the earlier case, the road in question had been given up a year before in pursuance of an arrangement made by common consent of the villagers, and was not a public thoroughfare *at or immediately previous to the time of inquiry*; the Sessions Judge held that the limit in s. 147 was applicable. In the later case, the High Court were probably influenced by the fact that the Assistant Commissioner had ignored an application for a jury. The Deputy Commissioner, in referring the case, remarked:—"The Assistant Commissioner had no power to go further into the case once the plea that the road was not a public one was set up." This remark is quite erroneous, and does not

represent the law. Both the High Court rulings state that the plea must be a *bonâ fide* one, and to decide this question the Magistrate must look to the length of time during which the way has been used by the public. The law states that he is only to satisfy himself that the way is or may be lawfully used by the public. In England a mere plea of title does not oust the jurisdiction of Justices; it has over and over again been held that the plea must be a *bonâ fide* plea, a fair and reasonable claim made in good faith, and not a specious plea put forward with the object of ousting jurisdiction. (See English cases quoted in my "Comparative Criminal Jurisprudence" under sections relating to mischief, criminal trespass, *et aliunde*). When a road has been used by the public for a long time, it is for the person who denies such right to establish his allegation in the Civil Court (see s. 147). It cannot be assumed that the High Court wish to render s. 133 a dead letter. Magistrates have, in many instances, to decide questions of right and title (*e. g.*, s. 425, P. C., see definition of 'wrongful loss'). Their jurisdiction is not ousted by a mere claim of title. If this were so, they would have to release every thief, dacoit, and receiver of stolen property, who alleged that property found with him was his. In the earlier of the cases above-quoted, the High Court remarked: "When there is a *bonâ fide* dispute, the Court should pass no order under ss. 133—137, C. P. C., until the public right has been established by proper legal proceedings, civil *or criminal*." Does the act complained of amount to a public nuisance? If so, it may at once be dealt with under ss 268, 283, P. C. Even the obstruction of a private way over land or water is punishable in the absence of good faith (s. 339, P C., excep.), and the Magistrate must decide on the question of good faith. Sections 425, 431, P. C., may, in some cases, be applicable. WILSON, J., in his judgment, remarked, that the right of way was "at least open to doubt." I think the procedure of s. 133, C. P. C., should, ordinarily, be reserved for obstructions *in the shape of encroachments* on public roads or paths, where the only issue would be as to whether the building, erection, hedge, cultivation, or otherwise, constituted an encroachment or not. Where, from a long time, villagers have been going by a certain path to a river, ghat, or to their fields, where, in short, a path has been constantly used by the public, and some person closes it altogether by erecting a barrier across it or otherwise, a prosecution should be instituted for public nuisance under s. 268, P. C. (See English and other cases quoted in "Comparative Criminal Jurisprudence" under s. 268, P. C.) Under the first part of the section it would only be necessary to prove common 'injury,' *i.e.*, harm illegally caused. *When a right has actually been exercised for a long time*, the person who denies it must go to the Civil Court. He cannot be permitted to advantage by his own wrong, and if, by any act or illegal omission, he causes obstruction to those who may have occasion to use such right, he clearly brings himself within the meshes of the criminal law. In such a case it is for the Magistrate to decide as to the existence of the right. It has been held by the Bombay High Court that a prosecution under s. 268, P. C., can be instituted, although proceedings under s. 133, C. P. C, may have been first instituted.

This section does not warrant a Magistrate's interference with a prostitute for the purpose of removing her from her dwelling-house, simply on the ground of her profession, so long as she behaves herself orderly and quietly, and creates no open scandal by riotous living.—24 W. R., Cr., 68. As to the word 'trade' used in the section, prostitution is a trade (in fact the trade *par excellence*, *kash*, *kasbi*, *pesha*, *peshakur*) recognized and legalized by Hindu Law.—2 Madras H. C. R., 56.

When, after inquiry, a Magistrate finds that there is no sufficient cause for proceeding under s. 521 (now 133), he is competent to let the matter drop. As a Court of revision, the High Court cannot enter upon a consideration of the value of the evidence on which the Magistrate decided so to act.—I C. L. R., 486.

"The Darogahs (now Sub-Inspectors) of Police *shall prevent* all encroachments on the public roads, and shall, at the same time, report the circumstances of each case for the information of the Magistrate, and record an abstract of the same in his thanadari proceedings" (daily diary).—Reg. XX of 1817, s. 30, para. 5.

In England, every one commits a common nuisance who obstructs any highway, by any permanent work or erection thereon or injury thereto, which renders the highway less commodious to the public than it would otherwise be, or who prevents them from having access to any part of it by an excessive and unreasonable temporary use thereof, or by so dealing with the land in the immediate neighbourhood of the highway as to prevent the public from using it and enjoying it securely.

See also I. L. R., 12 Calc., 696.

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

"Published in such manner as the Local Government may direct" When the order cannot be personally served, it shall be notified by proclamation by beat of drum at the place where the nuisance to be removed or abated is situated.—Beng. Not., 15th March, 1883.

Person to whom order is addressed to obey, or show cause or claim jury.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the

Indian Penal Code; and the order shall be made absolute.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

When the person appears and wishes to show cause, the Magistrate is, under this section, bound to take evidence.—8 C. L. R., 431.

A Subdivisional Magistrate ordered a person to abate a nuisance or to appear and show cause before a Second Class Magistrate. The said person appeared as directed, and the order was made absolute under this section. The Second Class Magistrate then issued a notice and order under s. 140. The District Magistrate referred the case on the ground that the Second Class Magistrate had no jurisdiction to pass final orders in such cases. *Held*, that the order was legal. See the words in s. 133, "to appear before himself or some other Magistrate of the first or second class." In the case of appointing a jury, the application is to be made "to the Magistrate by whom the order was made" (s. 135 (*b*)). The words "the Magistrate" in the first two clauses of s. 137 can only mean the Magistrate empowered and directed to take the evidence. No reference to the Magistrate who made the order is required.—I. L. R., 9 Bom., 201.

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

The Magistrate is bound to act according to the recommendation of the majority of the jury.—25 W. R., Cr., 31. When a majority of the jury have found the Magistrate's order reasonable and proper, and the order is carried out, no suit in the Civil Court will lie. Where a special remedy is given, the general remedy is thereby taken away. The reason for taking away the jurisdiction in such cases from the Civil Courts, and giving it to the Magistrate, is stated in *Baroda Prosad Mustaphi* v. *Gora Chand Mustaphi*.—3 B. L. R., A. C., 395; 11 B. L. R., 9.

In a certain case the jury found that the order of the Magistrate was, to a certain extent, reasonable and proper, and the Magistrate proceeded to enforce it *pro tanto*. The Judge referred the matter to the High Court, on the ground that the road was not a public thoroughfare. As a matter of fact, what the jury found was, that the pathway was used by the women of the village as a means of access to a certain tank, and that the objector had no right to close it altogether; but that it was not necessary to keep open a way of greater width than three feet. The High Court held, that they had no power to interfere with the decision of the jury.—16 W. R., Cr., 66.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the

time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

"The jury appointed." If one juror falls sick, or cannot act, the Magistrate should appoint another. When the foreman appointed a substitute, a conviction for disobedience was set aside.—10 C. L. R., 193. If a fresh juror is appointed, a fresh time must be fixed, within which the verdict must be returned.—14 W. R., 69. This ruling is scarcely sound. It has been ruled in other places that, if the jury do not report within the prescribed time, still the Magistrate must consider their report. This ruling also is not warranted by the terms of the law. It is in the discretion of the Magistrate to allow a further time. If *from any cause* the jury do not return their verdict within the time fixed, the Magistrate *may pass such order as he thinks fit.* He is not bound to wait. Such attempts on the part of the judiciary to nullify and repeal the plain words of the statute-law are much to be deplored.

Injunction pending inquiry.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisances.

143. A District Magistrate or Subdivisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

See Sched. V, Form 20; and s. 291, Penal Code. It should be noted that orders under this section are not open to appeal or revision (s. 435, *infra*). The High Court cannot lawfully interfere with them on any pretext whatever.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance.

144. In cases where, in the opinion of a District Magistrate, a Subdivisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order, stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or any affray.

An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally, when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

It is only necessary that the Magistrate should *bonâ fide* consider that his direction falls under the latter portion of the second paragraph. He may act on oral or any information, and it is not necessary that such information should be on the record.—I. L. R., 3 Mad., 351.

It should be noted that orders under this section cannot be touched by the High Court (s. 435, *infra*). Any person aggrieved should petition the Government. If it is necessary that the order should be permanent, or in force for more than two months, the Magistrate should address the

Secretary to Government in the Judicial Department, with the view of its being notified in the local Gazette.

Even under the former Code it was held by a Full Bench, that the High Court cannot interfere on any ground whatever with orders duly passed by a Magistrate under s 518 (now 144).—I. L. R., 2 Calc., 293. GARTH, C. J., delivered the opinion of the Full Bench:—"As the Magistrate states that riot or affray was imminent, and that he considered that the direction he gave tended to prevent, and was likely to prevent, a riot or an affray, and as the facts stated by the Magistrate show that there were some grounds for the opinion which he expressed, we think that he had power, under s. 518 (now 144), to make the order complained of (an order whereby the petitioners were prohibited from holding a hât on certain days). This Court, therefore, cannot interfere with it under s. 15 of the Statute 24 and 25 Vict., c. 104; nor can the Court interfere on any other ground, as by s. 530 the order made is declared not to be a judicial proceeding, however much it may infringe upon what are, or may be (irrespective of this section), the undoubted legal rights of the petitioners."

It was ruled under s. 62 of Act XXV of 1861, that a Magistrate has power, under this section, to prohibit a particular landholder from holding a hât on a particular spot on a particular day, at least for a temporary period, if he is satisfied upon reasonable grounds that the order is likely to prevent, or tends to prevent, a riot or an affray.—10 B. L R., 434. In this case the Full Bench remarked: "The law gives a very wide discretion to the Magistrate in matters affecting the public tranquillity, and it is not for us to curtail that discretion by construing the Act in a manner contrary to the plain and obvious meaning of the words in which it is expressed. It has been argued that the powers vested in the Magistrate must be confined to those acts and modes of enjoyment of property only which are in themselves unlawful: and that, as there is nothing inherently illegal in a man holding a hât on his own land on any particular day he chooses, the order passed by the Magistrate in this case must be set aside as void for want of power. But not only is this restricted construction not supported by the actual words of the section, but its adoption might, in many cases, lead to the most dangerous consequences. A particular act or a particular mode of enjoyment may be perfectly innocent and lawful in itself. But the act may be done, or the property enjoyed, in that particular mode under circumstances calculated to lead to a serious breach of the peace, attended even with loss of human life; and it would be by no means proper or desirable to hold that even in such cases the chief peace officer of the district has no power to issue an order such as that contemplated by s. 62." The Court also remarked: "Every individual right is, to a certain extent, subject to the general interests of society. The Legislature has purposely vested the Magistrate with powers sufficient to cover a case like the one mentioned in the order of reference. It is notorious that, in this country, rival hâts are frequent sources of riot and affray; and there is something in the nature of such hâts, namely, the assemblage of large crowds of men on both sides, which may be said to have a certain tendency to lead to a breach of the peace."

It was held under s. 518 of Act X of 1872 (now 144), that a Magistrate may, under this section, forbid two parties to use any musical instrument in the neighbourhood of each other's houses *for the purpose of mutual annoyance*—6 W. R., Cr., 40

If a tank is proved to be injurious to the community, a Magistrate may treat it as a public nuisance and cause it to be filled up.—10 W. R., Cr., 27.

Where a Deputy Magistrate, without taking evidence, made an order under this section, changing a day on which a hât used to be held, and subsequently, on taking evidence, found that his first order was wrong, he was held to have acted properly in recalling his first order.—13 W. R., Cr., 72.

Where a Cantonment Joint Magistrate, acting on the advice of the Station Staff Surgeon, ordered a person to desist from storing hides in the station, and directed him to remove the hides to a place distant from the town, the High Court held that the order appeared to be one under s. 518 (now 144), and therefore neither they, nor the Sessions Judge, had any power to interfere.—22 W. R., Cr., 52. The case would also fall under s. 133.

Where an executive officer makes an order, or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification, until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.—I. L. R., 6 Calc., 88.

If the case distinctly falls within operation of s. 133 (521 of 1872 Code), the provisions of that section should be complied with,—*i.e.*, the defendant should be called upon to show cause.—1 B. L. R., Ap. Cr., 20.

It was ruled under s. 518 (now 144) of the former Code, that a Magistrate is not empowered to pass an order under s. 518 (now 144) which has more than a temporary operation; the grant of what is in effect an order for a perpetual injunction is beyond his powers.—I. L. R., 5 Calc., 7. See 4 C. L. R., 309. In another case (I. L. R., 5 Calc., 132) it was held that, in dealing with the civil rights of a subject under s. 518 (now 144), it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient enquiry as to whether the act prohibited is likely to cause a breach of the peace, is within, or is in excess of, the legal right of the person forbidden to do it; and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of probable breach of the peace. This ruling is no longer applicable. All that the Magistrate has to do, if he wishes the order to be permanent, is to apply to the Local Government.

An order made under s. 518 (now 144) is not bad, simply because it interferes with the rights of individuals; but, when such interference is necessary, it is the duty of the Magistrate to limit it as much as possible.

The Bombay High Court remarked, in the case of *Ramchundra Ekanath*:—"In this case the accused were in possession and management of the temple, and the Magistrate considered, and we think he reasonably considered, that the direction given for widening and heightening the door would prevent danger to human life or safety; and therefore the order is within the terms of the section. The Magistrate who heard the appeal in this case has found the property to be public, and in dealing with the case, as brought before us, we must take the fact to be as found by him. The contention that s. 518 (now 144) does not apply to private property does not arise here, since the present case cannot be considered as one of private property, and the injury as one to private persons. *Even if the property was private, we think that the section would apply under the circumstances of this case*, as the building is a place open to all the

Hindu public who are invited to it, and who have a right to go there on paying the customary offerings to the idol. It is contended that there should be some limit to the application of the section, but it is not necessary for us to fix that limit, since it is always to be remembered that this power is discretionary, *and I am not at all certain that the discretion of the Magistrate is not intended to be the limit.* In point of law no ground is shown in this case for our interference."

If the Magistrate is satisfied of the existence of an emergency which calls for the exercise of the power conferred on him by this section, *he is justified in suspending the exercise of rights, however well ascertained. Per* TURNER, C. J., in *Sundrum Chetti and others* v. *The Queen.*—I. L. R., 6 Mad., 203 The first duty of Government is the preservation of life and property, and, to secure this end, power is conferred on its officers to interfere with even the ordinary rights of members of the community. In *Sivappachari* v. *Mahalinga Chetti* (1 M. H. C. R., 50), the plaintiff, a goldsmith, asserted a right to conduct a marriage procession along a public highway. The defendant pleaded that it was not usual for people of the plaintiff's caste to pass along the road, which lay in front of the Palubidre Pagoda, "in conveyances and with music." The Court held the procession was one which the plaintiff was authorized to institute. Being conducted by him on the public highway, *his right to make use of the highway could only be questioned by the Magistrate*, who, for the preservation of the peace, might, if he saw sufficient grounds, interdict the procession.—I. L. R., 6 Mad., 215.

Where a Magistrate made an order under s. 518 (now 144), directing one of two rival hât proprietors to remove his hât to such a distance as to render it useless for the purposes for which it was established.—*held*, that the order came within the purview of the Full Bench decision in *Gopimohan Malik* v. *Taramoni Chowdrani*, 4 C. L. R., 309, and might be set aside as in excess of jurisdiction.—4 C. L. R., 410. But now the High Court could not touch the order. It could only be altered or rescinded by the Magistrate himself or the Local Government.

In a case of dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power under s. 518 (now 144) to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court.—8 C. L. R., 231.

An order to abstain from interference with a temple and its property is an order to abstain from a 'certain act' within the meaning of s. 518 (now 144) of the Criminal Procedure Code. In this case, a person, whom the Magistrate considered to be out of possession, was ordered "to abstain from in any way interfering with the management, worship, or administration of the temple and its appurtenant estates."—I. L. R , 3 Mad., 354.

Regard for the public welfare is allowed temporarily to override the private right. A Magistrate can pass an order that all music should cease when a procession passes a place of worship *at a time appointed for such worship.* But a general prohibition cannot be passed forbidding music to play *at any time* on passing some place of worship.—I. L. R., 2 Mad., 140.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

145. Whenever a District Magistrate, Subdivisional Magistrate, or Magistrate of the first class, is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Inquiry as to possession.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Party in possession to retain possession until legally evicted.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

Proceedings under s. 145 are probably to be regarded as summons-cases, in which the parties must produce their own witnesses. But the Magistrate must not arbitrarily refuse assistance.—I. L. R., 11 Calc., 762.

In this case applications were made to summon 99 and 114 witnesses. PRINSEP and GRANT, JJ., held, that the number of witnesses was not necessarily a reason for refusing to grant process. But the number surely raised a presumption that the applications were made for purposes of vexation, delay, or defeating the ends of justice. The High Court have several times laid down that proceedings under s. 145 should be speedy and summary. But the examination of two hundred witnesses would convert them into long civil suits. The Magistrate also refused to hear the arguments of pleaders at the close of the case. The Judges held he was wrong. But see s. 340, C. P. C. Only *accused* persons may of right be defended by a pleader. The Magistrate appears to have acted well within his right. It is very necessary that all doubtful rulings such as these should be referred either to a Full Bench or to some Legislative Commission.

There is nothing in the law which enjoins the serving of notice upon all the co-sharers in an estate which may, in some shape or another, form the subject of a litigation under this section. The notice need only be served on persons actually concerned in the dispute.—9 B. L. R., App., 39; and 18 W. R., Cr., 54.

A dispute as to the right to collect rents is a dispute concerning tangible immoveable property.—I. L. R., 11 Calc., 413. *Held*, that, in this point, the wording of the new law makes no alteration in the old law.

The possession of a master by his servant—of a landlord by his immediate tenant, the person who pays rent to him—of the person who has the property in the land by the usufructuary, come within the meaning of the words 'actual possession.' Their meaning is not limited to bodily possession. But a person is not in 'actual possession' where the rents are paid by the actual occupier, not to him, but to an intermediate holder.

All that is required to make a proceeding under this section proper and valid is, that the Magistrate should be satisfied that a dispute exists and he is to record the grounds of his being so satisfied. There is nothing which defines upon what grounds he shall be satisfied, or limits him to being satisfied by evidence given before him.—9 B. L. R., 229. This ruling overrules 7 B. L. R., 329, and upholds the ruling at 7 B. L. R., 324 *note*, in which Justices JACKSON and MARKBY held that a Magistrate may act on a police report, if such report satisfies him that there is likely to be a breach of the peace. The present law gives a wider discretion to the Magistrate. He may now act *on any information*.

A and B had a dispute about the possession of a certain muth. A was declared by the Magistrate under this section to be in possession. Subsequently, B got a certificate under Act XXVII of 1860, and applied to the Magistrate for possession, which was given to him. *Held*, that the Magistrate's order, giving possession to B, was irregular, and must be set aside.—2 B. L. R., App. Cr., 27. The High Court remarked: "The grant of the certificate does not decide the title to the land; and if it did, an order of the Civil Court must be executed by that Court, and not by the Magistrate."

The word 'shall' makes action obligatory on the Magistrate. If he is satisfied of the existence of a dispute 'likely' (the words are not 'imminently likely') to induce a breach of the peace, he is bound to take action. Prompt action is requisite in cases of dangerous disputes regarding the possession of land.—6 W. R., Cr., 4.

In proceedings under this section, a Magistrate should not hold a lengthened and protracted investigation, but should make a speedy and summary inquiry into the fact of possession, and pass, with as little

delay as possible, an order declaring the party whom he finds in possession entitled to retain it until ousted by due course of law.—11 W. R., Cr. 36.

Where each of two parties claimed a 5-anna 4-ganda share of a certain property, neither alleging that the other was joint with him in any way, and the Magistrate went into the question of possession, and maintained the possession of the party found in possession, the High Court held that the case fell under s. 530 (now 145), and that the decision was proper.—25 W. R., Cr., 16.

The possession regarding which parties are required to give proof in a case under this section, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision.—20 W. R., Cr., 51 But elsewhere it has been ruled, that the possession to be determined is the possession at the time the dispute arose,—*i. e.*, at the time the Police reported that a breach of the peace was likely to take place.—24 W. R., Cr., 74. Again it has been held, that ouster by one person of another lawfully in possession of property confers no rights on the former which can be recognized in proceedings taken under this section. The Court should refer back to a time previous to the quarrel, when such possession was peacefully enjoyed by one or other of the disputants (I. L. R., 4 Calc., 117). The High Court remarked :—" The Deputy Magistrate seems to think that if two parties come forward, one being lawfully in possession and the other struggling for possession, and the latter succeeds in ousting the former, he is to recognize the stronger and successful party as the one to be maintained in possession under s. 530 (now 145), although such possession has never been acquiesced in, and the struggle for it is in fact that which caused him to interfere. This is an error. The Magistrate must look to possession which may be termed peaceful. He must go back to the time when the present dispute originated, and not to the result of the dispute itself. The Magistrate has misapplied the power given by the law, and has given support to a deliberate attempt by Khettra Nath to enforce his own claims by the high hand." But it has recently been ruled that the Magistrate must find who is in possession at the time when he is enquiring into the matter, which, in the contemplation of the law, is identical with the time of the institution of the proceedings. The word 'then' has been inserted in the new Code.—I. L. R., 11 Calc., 365 ; 12 Calc., 521. But see a later ruling in I. L. R., 12 Calc, 539.

The possession given by an Ameen in a butwarra-proceeding is simply one of ownership, and not of occupancy. Such possession cannot, therefore, in proceedings under s 530 (now 145), be held to oust tenants occupying lands previous to such delivery of possession. — I. L. R., 4 Calc., 378.

The language of the section indicates that the notice shall be addressed to known individuals, and not be in the form of a public proclamation or citation —I. L. R., 4 Calc, 650.

A, a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of B, another joint owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under s. 530 (now 145), awarding to A exclusive possession of the part of the land on which the edifice had been erected. *Held*, that such order was erroneous, as the matter was not one to which s. 145 could apply.—I. L. R., 3 Calc., 573.

A Magistrate cannot, under s. 145, order that a person be kept in possession until he has reaped the crop standing on the ground, and

then that he shall give way to another. Where there have been long pending disputes in the Courts he should determine who was in peaceable possession when they commenced.—1 C. L. R., 136.

In a case under s. 530 (now 145), concerning possession of a ferry, one of the parties died just before the proceedings terminated. The order was passed in favour of two persons, one being the deceased. The High Court remarked: "Though probably it would have been more regular had the Magistrate postponed the case so as to enable some representative of the deceased to appear, the death could have prejudiced no one, since the order was in favour of the deceased and another person."—2 C. L. R., 264.

Where the contending parties are admittedly in joint possession of certain premises, a Magistrate cannot determine under s. 530 (now 145) whether one of them is at liberty to make use of the land in such a manner as to cause annoyance to another and against his will. Such a matter is beyond his jurisdiction. Any order passed under s. 145 ceases to have effect when the party aggrieved by it obtains an order from the Civil Court declaring his rights as against such order.—2 C. L. R., 62.

A certain mouza having been sold in execution of a decree obtained upon a mortgage, the purchaser claimed a right under the sale to a hât appurtenant to the mouza, and was put by the Nazir of the Civil Court into symbolical possession of the hât as well as the mouza. The judgment-debtor refused to give up actual possession of the hât, maintaining that it was debutter property, of which he was the shebait. A breach of the peace being imminent in consequence of the rival claims, proceedings were taken under s. 530 (now 145), and the Magistrate, finding that the judgment-debtor was in actual possession of the hât, made an order maintaining him in such possession until ousted by a Civil Court. *Held*, setting aside that order, that the Magistrate had no power under s. 145 to direct the judgment-debtor to be retained in possession until ousted by a Civil Court, but was bound to see that the possession as given by the Nazir was maintained, leaving it to the debtor to substantiate his claim as shebait in a Civil Court. The Court accordingly directed that the purchaser be restored to possession, and that the Magistrate do see that he is kept in possession until ousted by due course of law.—5 C. L. R, 200.

Section 530 (now 145) contemplates disputes between owners as well as occupiers. *Per* JACKSON, J.—Where a zemindar has let his lands in farm, he, his farmers, and the occupying ryots are all in their degree concerned in any dispute as to possession which may arise, and they ought to be maintained in possession of the interests which they severally enjoy. *Sutherland* v. *Crowdy*, 18 W. R, 11, cited. *Empress* v. *Thakoor Doyal Sing*, I. L. R., 3 Calc., 320, commented upon as having gone too far.—5 C. L. R., 287. But see I. L. R, 11 Calc., 413, above cited.

The Regulation of 1793 recites the danger to the public peace arising from landholders asserting by the strong hand their claims to the possession of land, and prescribed a form of summary resort to the Dewany Adalut, or Civil Court; and Reg. XV of 1824, dealing with a greater urgency, transfers the cognizance of such matters to the Fouzdari Adalut, *i.e.*, the Magistrate, and the jurisdiction is continued by Act IV of 1840, which similarly directs the Magistrate to call before him all persons concerned in the dispute (whether proprietors, dependent talookdars, farmers, ryots, or other persons) who are to "give in a written statement of their respective claims as respects the fact of actual possession," the word 'actual' being here used in contradistinction to

the right to possession. In s. 530 (now 145), the same language is used except that the enumeration is omitted. From this we are not to infer any change of meaning. In the same case, McDONELL, J., said :—" I feel bound to say that I now think the case of *Empress* v. *Thakoor Doyal Sing*. I. L. R., 3 Calc., 320, goes too far in that it excludes those who are identical in interest with their sub-tenant, whereas a dispute in regard to the right to the rent may undoubtedly, in certain cases, as for instance where the system of payment in kind prevails, involve a dispute regarding crops and other produce of land between rent-receivers, which would come under s. 530 (now 145), as in this case the produce itself goes to the rent-receiver, and he is as much in actual possession as the cultivator; so in respect of water and fisheries, all the persons interested, landlord as well as tenant, are jointly in actual possession, and a stranger cannot interfere with them without taking away a part of the subject-matter over which their proprietary right is to be exercised. In the case of boundary disputes again, when there is a question whether a certain piece of land is occupied by the owner and under-tenant of one estate, or by those of the conterminous estate, there is a sufficient community of interest; but when the question is not whether A and his tenant B, or C and his tenant D, are in possession, but whether B the tenant admittedly in possession is to pay his rents, being money-rents, to A or C, I have doubt whether a Magistrate could interfere under s. 530 (now 145)."

A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought, the procedure to be adopted in such cases being that provided in chap. xix, ss. 334, 335, of the Civil Procedure Code.—6 C. L. R., 206.

There is nothing in the law which prevails in the mofussil of the Bengal Presidency to prevent any private person from establishing a private ferry, and levying tolls from those who use it; but in order to acquire the exclusive right to such a ferry, the claimant must prove a user of not less than twenty years.—7 C. L. R., 504.

Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land, it is a Magistrate's duty to uphold that decree; and he cannot, as between such parties, proceed under s. 530 (now 145) to decide afresh upon the question of possession.—16 W. R., 24; 24 W. R., 17, followed; 7 C. L. R., 516.

The Court remarked: "The Magistrate seems to be under the impression that what is called *symbolical possession* was given to the landlord; but this is a mistake. Symbolical possession is given under s. 264 of the Civil Procedure Code, and is only applicable to cases where the party entitled to execution does not obtain actual possession of the land, but only the right to receive the rent of it. Here, under s. 263, the landlord obtained *actual possession*."

Where action was taken under s. 530 (now 145), the Magistrate recorded the following statement—" whereas from the police report a breach of the peace is probable"—as the ground of his proceeding under that section,—*held*, that the proceeding thus recorded by the Magistrate was not in itself a sufficient compliance with the requirements of the section, which requires that the proceeding shall state that the Magistrate is satisfied that a dispute likely to induce a breach of the peace existed and the ground upon which he is so satisfied, but that the Police report referred to might be incorporated to show that a dispute likely to induce a breach of the peace existed, and that there were grounds upon which the Magistrate might reasonably be satisfied.

Where there has been substantial evidence of possession, or a conflict of evidence on that question, the Magistrate is justified in looking to the evidence of title in corroboration of the evidence of possession. FIELD, J., said: "The Magistrate is not entirely precluded from receiving any evidence whatever as to the title of the parties. That possession should follow title is a reasonable and natural presumption; and if a Magistrate, in a case of this kind, uses evidence of title merely in order to guide and assist his mind in coming to a decision upon the question of possession, it appears to me that he is not transgressing the law; but if, instead of proceeding to decide as to the actual possession, he virtually puts aside the consideration of this question, and determines the question of title alone, then I think he is clearly doing that which the law has forbidden him to do."—8 C. L. R., 245, and I. L. R., 7 Calc., 46.

Quære.—Is it necessary that a preliminary proceeding should first be recorded to give the Magistrate jurisdiction?—22 W. R., Cr., 81, and I. L. R., 7 Calc., 385. See also I. L. R., 8 Calc., 724, and note under s. 115, *supra*.

A breach of the peace must be *likely*, and not merely *probable*. Neither need it be *imminent*.

A Magistrate's finding as to the point of actual possession is conclusive.—I. L. R., 5 Bom., 387.

The principle that where there has been a decree passed between rival claimants to immoveable property, it is the duty of the Magistrate to maintain such decree, is applicable to orders in proceedings under the Land Registration Act, declaring a particular person in possession. A Deputy Magistrate cannot, in a proceeding under s. 530 (now 145), set aside an order which he has made in a registration-case, as that order can only be set aside in a regular suit.

The proper course for a Magistrate to pursue, if the unsuccessful party does any act that may probably occasion a breach of the peace, is to take action under s. 491 (now 107), Criminal Procedure Code.—8 C. L. R., 217, and I. L. R., 6 Calc., 835.

A dispute existing between one of the co-sharers of an undivided estate and the lessee of another co-sharer as to the right of the latter to collect rent, such right being denied on the ground that the lessor was not in possession of her share, an inquiry was made under s. 145, and the lessor was declared to be in possession of her share. *Held*, that the provisions of that chapter were not applicable to the dispute in question.—I. L. R., 5 All., 507.

With regard to *Ambler's case* (I. L. R., 11 Calc., 365), the ruling can hardly stand the test of a Full Bench; but meanwhile it is doing much mischief in the mofussil, where it is often pressed before Magistrates, who do not know that it is utterly opposed, not only to the intention of the Legislature, but to numerous decided cases of the Calcutta High Court. Wrongful or forcible dispossession (amounting to a criminal offence) cannot be recognized in proceedings under s. 145. The section (as the High Court have over and over again held) is intended to prevent attempts to enforce claims by the high hand. The ruling of TOTTENHAM, J., appears to have proceeded on the mistaken assumption that actual means no more than manual possession. A perusal of Savigny's Treatise on Possession is sufficient to expose the unsoundness of TOTTENHAM J.'s remarks. A thief may have *possessio*, but he has no *actio furti*. Actual possession means *justa* or *bonâ fide possessio* as opposed to *injusta* or *violenta possessio*. The expressions naked or *de facto* possession are not equivalent to actual possession. The ruling of TOTTENHAM, J., is a direct incentive to riots and crimes of violence. If

Pushong and Sen had again ousted Ambler by violence on the following day, they must have been maintained in possession. A man might use the telegraph or a special messenger to let him know when the Magistrate was about to record an order under s. 145. He could then take some *latials* and squat down on the land! There is a later ruling that enquiries under s. 145 should be directed to the question as to which party was in possession of the subject in dispute before any proceedings in the Courts have been taken in the matter.—I. L. R., 12 Calc., 539.

A dispute concerning the right to fish in a *julkur* is not a dispute concerning any "tangible immoveable property."

Power to attach subject of dispute.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

A certificate under Act XXVII of 1860 simply empowers the person to whom it is granted to demand and receive the debts due to the deceased, and is in no way a determination of a competent Civil Court of the right of such person to possession of land under attachment under this section.—9 W. R., Cr., 18.

It is only when, after recording a proceeding and taking evidence, a Magistrate decides that neither party is in possession, or is unable to satisfy himself as to which party is in possession, that he can, under s. 531 (now 146), attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings.—1 C. L. R., 86, 273.

When the dispute was between the wife of a lunatic and the manager of his estate, the Magistrate attached the property, as, although it was shown that the wife was in actual possession, there was a doubt as to whether she was not in possession merely as the agent of her husband. *Held*, that the section has only to do with actual possession, and the Magistrate should have decided that the wife was in possession.—3 C. L. R., 94.

Disputes concerning easements, &c.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done

obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

See notes under s. 133, *supra*. Under the present Code, it is necessary that the dispute should be one which is likely to cause a breach of the peace. When, in proceedings under s. 133, the plea is raised that the way is not a public way, the Magistrate does not try such fact under this section, the power to decide on such plea being incidental to his jurisdiction under s. 133.

"During the season next before such institution" have been substituted for "during the last of such seasons before the complaint." Probably no change in the law is intended. Season does not mean one of the four seasons of the year, but the time at which any particular right is exercised.

Section 532 (now 147) does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public, or some person or class of persons.—I. L. R., 5 Calc., 194. There must be an actual and not merely a speculative dispute. In this case there was no evidence that any one had passed over the road between sunset and sunrise: nor, so far as the evidence showed, had the right ever been claimed.

A right of way along a private road belonging to another person does not give the dominant owner a right that the road shall, in no respect, be altered, or the width decreased, for his right does not entitle him to the use of the whole of the road, unless the whole width of the road is necessary for his purpose: but it is merely *a right to pass with the convenience to which he has been accustomed*. The right, therefore, merely extends to that portion of the centre of the road which is necessary for the due exercise of the right of passage. The only obligation upon the servient owner is, that he shall not unreasonably contract the width of the road, or render the exercise of the right of passing less easy than it was at the time of the grant. Goddard on Easements. See I. L. R., 7 Calc., 145.

The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement different from the ordinary rights of owners of land; the burden of proof would, therefore, lie upon the party alleging such rights.—I. L. R., 11 Calc., 52.

A person who has a right of way cannot claim anything more than that the reasonable exercise of his right shall not be obstructed. It is only ownership of the land that carries with it the ownership of everything *usque ad cœlum*.—I C. L. R. 425.

Where a right of way for a particular purpose is proved to have existed for upwards of 20 years, the Court is not bound to confine the

right to the precise number of times in the year that it has been exercised. but may construe it *as a right to use the road at all convenient times for the particular purpose.*—I. L. R., 9 Calc., 778.

For the purpose of acquiring a right of way or other easement under s. 26 of the Indian Limitation Act, it is not necessary that the enjoyment of the easement should be known to the servient owner.—I. L. R., 10 Calc., 214.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Subdivisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

"Pleaders' fees." See s. 4 (*n*), *supra*.

In a proceeding under s. 530 (now 145), the Magistrate must decide the fact of possession on evidence taken by himself. and not according to the result of a local inquiry made under s. 533 (now 148), unless the parties have consented to be bound thereby.—3 C. L. R., 134. But the report of the person deputed may be now read as evidence in the case.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every Police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

See s. 42 (*b*) and notes under s. 54. *supra*. Act V, 1861, s. 23, enumerates the duties of Police-officers. It is one of their duties to prevent the

commission of *offences* (not merely cognizable offences). A Police-officer may interfere to prevent mischief to private property (not falling under s. 152, *infra*). If he could only prevent it by arrest, he would clearly be entitled to arrest.

Information of design to commit such offences.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Omission to give the information required by this section, if simple omission, is punishable under s. 176, Indian Penal Code; but should the intention of the party by such omission be to defeat the ends of justice, he is punishable under s. 119, Indian Penal Code.

Arrest to prevent such offences.

151. A Police-officer, knowing of a design to commit any cognizable offence, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152. A Police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark, or buoy or other mark used for navigation.

Inspection of weights and measures.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing, which are false.

If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Omission to record an information would be punishable under s. 166 or s. 217, Penal Code, or s. 29, Act V of 1861.

Information in non-cognizable cases.

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid, the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

Under the law informations of non-cognizable offences should be entered in a separate book, and not merely in the daily diary. This is not done at present.

Investigation into cognizable cases.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local

area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Procedure where cognizable offence suspected.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided as follows:—

Where local investigation dispensed with.

(*a*) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where Police-officer in charge sees no sufficient ground for investigation.

(*b*) If it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

Reports under section 157 how submitted.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Reports are to be submitted through the officer in charge of the sub-district.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Police-officer's power to require attendance of witnesses.

160. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Intentional omission to attend is punishable under s. 174. Penal Code.

Section 160 authorizes a Police-officer to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case, but does not empower him to require the attendance of an accused person. Accused may be arrested at any time, if necessary, without a warrant.—I L. R., 7 Mad., 274.

The Police may order any person whom they believe to be in a position to give information to attend and do so, and the person so ordered to attend may decline to make any criminatory statement, but he cannot be *summoned to answer the complaint.*

Examination of witnesses by police.

161. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and *may* reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

"*May* reduce into writing." If the statements are reduced to writing, the Court may call for them under s. 94, *supra*, and ss. 162, 165, Evidence Act.

Refusal to answer questions is punishable under s. 179, Penal Code. Persons are now bound to answer truly. This nullifies the somewhat anomalous ruling in I. L. R., 7 Calc., 121 A witness who answers questions falsely will now be liable to punishment for giving false evidence under s. 191, Penal Code. See notes under s. 191, Penal Code.—I. L. R., 8 Bom., 216; 10 Calc., 405.

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or shall be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

As amended by s. 6, Act X of 1886.

No inducement to be offered.

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will

Even in England it has been repeatedly laid down by many eminent Judges, that, in the words of Sir Henry Keating (*R.* v. *Howell*, Summer Assizes, Lincoln, 1864), "it is the duty of a Police-officer to listen to all a prisoner says, and faithfully to give evidence of the same." Admissions to a Police-officer may be proved, though not confessions. See notes under ss. 25, 26, Evidence Act.

See notes under this section in my "Comparative Criminal Jurisprudence." A free statement, amounting to a confession, is receivable in England, even if made to a Police-officer.—*R.* v. *Baldey*, 2 Den C. C., 430. *Held*, also, receivable, where a constable had given a prisoner liquor to make him drunk, in the hope of his saying something.—*R.* v. *Spilsbury*, 7 C. and P., 187. So in another case, where the confession was obtained by deception.—*R.* v. *Derrington*, 2 C. and P., 418.

Power to record statements and confessions.

164. Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate."

A Village Magistrate in Madras is not a Police-officer, and a confession made to him is not inadmissible by reason of s. 25, Evidence Act.—I. L. R., 7 Mad., 287.

A confession recorded by a Magistrate, who afterwards conducts the inquiry preliminary to commitment, and has jurisdiction to do so, is to be treated as an examination under s. 193 (now 342), Criminal Procedure Code, and not as a confession recorded under s. 122 (now 164), notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the Police investigation. Section 122 (now 164), Criminal Procedure Code, contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is inquired into or tried. It does not apply to a confession recorded by a Magistrate actually inquiring into or trying a case.—I. L. R., 5 Calc., 954; I. L. R., 5 All., 253; 23 W. R., Cr., 16.

Where a confession is made to a Magistrate by an accused person during an inquiry held previously to the case being taken up by the committing officer, and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of this section and s. 346 (now 364), Criminal Procedure Code. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session may take evidence that the accused person duly made the statement recorded.—I. L. R., 5 Calc., 958.

This section authorizes a Magistrate to record the 'statement' of a person who appears before him as a witness, as well as the confession of a person accused of an offence.—I. L. R., 2 Bom., 643.

To give weight to confessions, the Magistrate should note in whose custody the prisoners were, and how far they were free agents.—5 W. R., Cr., 6.

Where the confession of a prisoner under this section was not taken in the manner provided by s. 346 (now 364) of the former Code, and was,

therefore, defective, *held*, that the evidence of the recording officer that such confession was actually made was inadmissible to remedy the defect.—I. L. R., 4 Calc., 696; 6 C. L. R., 353. But such a defect *must* now be remedied by taking evidence. See s. 533, *infra*. The provisions of that section set at rest a number of contradictory rulings as to supplementing an irregular confession by oral evidence.

It is desirable that Magistrates should act with deliberation in examining persons brought before them for the purpose of making confessions, and should, as far as possible, satisfy themselves that the confession is voluntary; and this, not merely from the declaration of the accused, but from an attentive observation of his demeanour.—C. O. No. 3, of 24th March 1880. It is not proper to allow the Police-officer who brought the prisoner to be present while the confession is being recorded by a mohurrir, and to suggest questions to be put to the confessing prisoner.—C. M. No. 7, of 30th July 1873.

The object of s. 122 (now 164) is to enable any Magistrate other than the Magistrate by whom the case is to be tried or inquired into to record a confession promptly.—6 C. L. R., 289.

Search by Police-officer.

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall so far as may be, apply to a search made under this section.

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

When officer in charge of Police-station may require another to issue search-warrant.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

Procedure when investigation cannot be completed in twenty-four hours.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Subdivisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

The Select Committee (1872) remarks on this section: "We have cleared up a doubt which previously existed as to detention in Police custody by order of a Magistrate, and whilst we have not required the accused person to be at once brought before a Magistrate—as that course

would defeat the object in view—we have provided that, if such an order is passed by a Subordinate Magistrate, he shall report the fact and his reasons for passing the order to the Magistrate of the District or of the Division of the District, thus securing a close supervision over the grant of these orders."

Report of investigation by Subordinate Police-officer.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable, and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and pro-

secute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Subdivisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany Police-officer.

Complainants and witnesses not to be subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. Every Police-officer making an investigation under this chapter *shall* day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

"To aid it in such inquiry or trial." This provision is very necessary in the interests of justice, and is often advantageous to the accused person. Many and conflicting were the rulings of the High Court on this point prior to 1872. In some cases Magistrates were abused for looking at police papers, in others they were censured for not having taken the trouble to look at them. In one case the High Court remarks: "The Magistrate in this case admits that, when he was holding the preliminary inquiry, he had not the police papers before him, and did not refer to them. In such a serious charge as this, *he should have been thoroughly acquainted with all the police proceedings, and should have referred to them.*"—14 W. R., Cr., 16.

A prisoner has no right to insist that a Police-diary, if not in Court, shall be sent for, or, if it be in Court, that it be referred to for the purpose of refreshing the memory of a Police-officer under examination. *Per* WILSON, J.—A witness cannot be compelled to refresh his memory from any document, unless the document is either in the possession of the party who desires to put it to the witness, or is at least such as he can insist on having produced. *Attamchand* v. *Kapurchand*, 11 Bom. H. C. Rep., 120, approved and explained.—10 C. L. R., 51.

The statements taken down under the provisions of s. 119 (now 161), Criminal Procedure Code, do not necessarily form a part of the diary which a Police-officer is required to keep by s. 126 (now 172).—*Per* FIELD, J., I. L. R., 8 Calc., 742. See Inspector-General's Cir. Memo. No. 8, 1882. But Courts have full power to call for documents under ss. 162, 165, Evidence Act. See note under s. 161.

These diaries, though they are not evidence of the facts stated therein, except against the Police-officer who made them, are yet, when regularly kept, of the greatest use in enabling the Magistrate to test the value of the testimony of the witnesses, to establish dates, and to supply the basis of a cross-examination. In cases where the police-investigation has extended over several days, and the credibility of any of the witnesses is doubtful, a careful inspection of the diary is often found necessary by a Magistrate; and any departure from the requirements of the law in the preparation and punctual submission of the daily diary will affect the case most prejudicially. When a case is sent for trial, the Police-officer in charge of the case is invariably to have the diary in Court, so that it may be ready, if the Magistrate wishes to see it or to examine upon it.—Circ. N, 1876. See ss. 145, 155, Evidence Act.

Report of Police-officer.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

As amended by s. 7, Act X of 1886.

Police to inquire and report on suicide, &c.

174. Every officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Subdivisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such

wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police - officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Subdivisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely: any District Magistrate or Subdivisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Power to summon persons.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Power to disinter corpse.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Where the Magistrate of a Division held an inquiry under s. 135 of the former Criminal Procedure Code (now 176) into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his inquiry, and sent the report to the Magistrate of the District, and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal,—*held* by the High Court, that there being nothing in the language of s. 135 (now 176) regarding the Magistrate holding such an inquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under s. 296 (now 439), Criminal Procedure Code. No analogy exists between a coroner's inquest and an inquiry into the cause of death under the Criminal Procedure Code.—I. L. R., 3 Calc., 742.

Proceedings under s. 176 are now declared not open to revision. See s. 435, *infra*.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

These sections deal with the law of *venue*—the law as to the place where a trial should be held. The Commissioners on the Old Code remark: "We have also inserted a provision which, unless I am much mistaken, will effectually prevent the undergrowth of cases upon this matter, which has disfigured English law. We propose that, unless it appear that actual injustice resulted from holding the trial in a wrong place, no effect at all shall follow from it." See s. 531, *infra.*

Act XI of 1872, an Act to provide for the trial of offences committed in places beyond British India, and for the extradition of criminals, extends the criminal law of India to British subjects, European and Native, in Native States, and invests Political Agents, who are Justices of the Peace and European British subjects, with the power of a first class Magistrate. The Act also makes British subjects in British territory, whether European or Native, liable for offences committed by them in Native States, under certain provisoes.—*Ibid*, s. 9.

See now Act XXI of 1879 as amended by Act X, 1882. As to cases under the Railway Act, see Act IV, 1879, s. 50.

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done, or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a.*) A is wounded within the local limits of the jurisdiction of Court X. and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b.*) A is wounded within the local limits of the jurisdiction of Court X, and is. during ten days, within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c.*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y. to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

A Magistrate should act under s. 65 (now 179) and following sections solely with reference to the convenience of the public. Ordinarily the proper district is that in which the witnesses can most conveniently attend. If a Magistrate thinks a case should be tried in another district, he should forward proceedings and accused to such other Magistrate If the other Magistrate differ from him in his opinion as to the district in which the investigation and trial can be most conveniently held. the first Magistrate should either proceed with the trials or refer the question of *venue* for the determination of the High Court.—Agra Sudder Court Circular, 21, 1864.

The Agra High Court has ruled that the term "anything which has been done" means some act constituting the offence or part of it, and the term "any consequence which has ensued" means some consequence completing or modifying that act. A bought a minor at Mirzapore with intent to use her for purposes of prostitution. and took the minor to Benares. where he was tried by the Sessions Court. The plea of want of jurisdiction was raised, but was overruled, on the ground that possession at Benares was a consequence of the offence. The Sudder Court ruled otherwise, holding that the offence had been completed at Mirzapore. The ruling of the Sudder Court is scarcely in accord with the spirit of the sections. Under the New York Code. the jurisdiction in cases of kidnapping, decoying away children, abduction, &c., is in any country in which the offence is committed, or into or out of which the person, upon whom the offence was committed. may in the commission of the offence have been brought, or in which any act of abetment has taken place.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*.) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. *Held*, that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property.—I. L. R., 6 Calc., 307. See also I. L. R., 1 Bom., 50; but *contra* see I. L. R., 5 Bom., 338, where the point is very fully discussed. Section 9 of Act VIII, 1882, now settles the matter. See notes under s. 410, Penal Code, which amends the definition of 'stolen property.'

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing

was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain,

or not in one district only,

or where offence is continuing,

or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be enquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court *through or into the local limits* of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.

A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft, which was based on the loss, should be tried at Tipperah or Chittagong, *held*, that the journey was not broken by the short halt, and that the case could be tried at Chittagong.—25 W. R., Cr., 45.

The ruling in 13 B. L. R., App., 4, *Field* v. *Pirun Ayah*, was opposed to the intention of the Legislature. The wording of the present Code avoids all possible misinterpretation See also s. 531, *infra*.

Offences against Railway, Telegraph, Post-office and Arms Acts.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

See Railway Act, s. 50.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. When a Presidency Magistrate, a District Magistrate, a Subdivisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

It is not essential that the Magistrate issuing the warrant should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such a warrant from a place in foreign territory.—I. L. R., 1 All., 340.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

What if the subject of a Native state commits an offence in British India, and the Political Agent of such state, thinking the offence has been committed in such state, takes depositions of witnesses and confessions of accused? Would such depositions be admissible under

s. 189? Such a case actually occurred on the border between Midnapore and Mbhurbhunj.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

See 2nd para., s. 503, *infra*, and s. 33, Evidence Act.

Political Agent' defined.

190. In sections 188 and 189, the expression 'Political Agent' means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Subdivisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance

under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

When a Magistrate takes cognizance of an offence under clause (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.

The last para. is added by s. 2, Act III of 1884. It goes far beyond the necessities of the case, and creates great inconvenience in the case of offences taken cognizance of by officers at subdivisions. High Court rulings regarding interest were already narrower than the English law on the same subject—see cases collected under s. 555 in my "Comparative Criminal Jurisprudence." But the law has now gone further than the rulings, and does not merely embody them. In I. L. R., 2 Calc., 23, it was ruled, that a Magistrate is not disqualified from dealing with a case judicially, merely because he has initiated the proceedings under cl. (*c*). It was held that a Magistrate ought not to act judicially in a case where (1) he is one of the principal witnesses for the prosecution, *and* (2) has himself discovered the offence and initiated the prosecution, *and* (3) there is no necessity for his trying the case.

See Sched. IV. Even a third class Magistrate may be empowered to receive complaints. It should be observed that even a first class Magistrate, though he may be empowered by the District Magistrate under s. 192 to distribute petitions, can only be empowered by the Local Government to take cognizance of offences under cl. (*c*). Contrast s. 529 (*e*) (*f*) with s 530 (*k*).

The Indian law prescribes no limitation for the cognizance of offences. See notes under this section in my "Comparative Criminal Jurisprudence."

A Magistrate may take cognizance of a case on the information of a third person, without any complaint by the party injured.—6 W. R., Cr., 3.

There is no rule that a convicted person cannot institute criminal proceedings.—21 W. R., Cr., 13

Where sanction has been given under s. 468 (now 195) by a Deputy Magistrate to a person to prosecute another for bringing false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 (now 191), without complaint.—I. L. R., 4 Calc., 712. This appears to be a very obvious ruling, but see ruling at I. L R., 8 Calc., 435.

Where a second class Magistrate, not empowered under s. 191 (*c*), summoned a man *suo motu* and tried him under an Abkári Act (Bombay Act V of 1878), which gives jurisdiction to second class Magistrates to try all offences under it, *held*, that the man had been tried by a Court of competent jurisdiction, and that s. 530 (*k*) was not applicable. Section 1 of the Code of Criminal Procedure states that "in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force. *or any special jurisdiction or*

power conferred, or any special form of procedure prescribed, by any other law now in force."—I. L. R., 10 Bom., 181. This ruling appears to be open to question, but it may be justified on the ground that the Magistrate had two accused legally before him (so it appears from the report), and then of his own motion summoned a third person from whom, they said, they had bought the toddy, for transporting which they were being prosecuted. When once a Magistrate has a case before him, he may summon any persons who he thinks have been concerned in the offences charged, though they have not been named by the complainant or sent up by the police. See 18 W. R., Cr., 43; 1 C. L. R., 523.

Transfer of cases by Magistrates.

192. Any District Magistrate or Subdivisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

A Magistrate, to whom a complaint is made over, may summon any persons who, he thinks, have been concerned in the offences charged, notwithstanding that the complainant has not named them, if either at the commencement or in the course of the trial he finds grounds for so doing.—18 W. R., Cr., 43. See 1 C. L. R., 523.

The power to transfer a case to another Magistrate does not include the power to recall it, when once made over (see s. 528, *infra*).

Cognizance of offences by Courts of Session.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

by Assistant Sessions Judges.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

The object of this section is to secure the prisoner a preliminary inquiry, which affords him an opportunity of becoming acquainted with

the circumstances of the offence imputed to him, and enables him to make his defence.—I. L. R., 3 Mad., 367.

Cognizance of offences by High Court.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognizance—

Prosecution for contempts of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences relating to documents given in evidence.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Nature of sanction necessary.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Before giving sanction under this section, it is not necessary that any notice should be given to the person against whom it is intended to proceed.—I L. R., 12 Calc., 58, overruling I. L. R., 10 Calc., 1100. The law is at last settled by this Full Bench Ruling.

It is only necessary that the prosecution should be instituted, and not that it should be completed, within the period of six months.—I. L. R., 6 All., 45.

A sanction to a prosecution for giving false evidence should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized.—I. L. R., 6 All., 105.

Sanction under s. 195 should only be given when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ facie* case against the accused.—I. L. R., 6 All., 114. *Quære.*—Does this mean that only a sanction given under this section can be revoked? If a Magistrate proceeds under s. 476, C. P. C., can his proceedings be revoked by the Court to which he is subordinate? See I. L. R., 4 Calc., 712.

The sanction of the Civil Court is not necessary to a complaint of forcible dispossession by a party who was put in possession by the Civil Court; nor is the Magistrate limited in his action by the mistake of the complainant in citing s. 188 of the Penal Code as the section under which the offence charged falls.—17 W. R., Cr., 10. The sanction of a Court to a prosecution for a false charge is only necessary when the offence has been committed before such Court, and not otherwise; and a judicial finding of the falsehood of a charge is not indispensable to such a prosecution.—I L. R., 3 All., 322; 25 W. R., Cr., 33; I. L. R., 1 All., 497; 4 All., 182; 1 Mad. H. C. Rep., 30.

It was held under the former Code that, for the purposes of s. 468 (now 195), a Magistrate of the first class is subordinate to the Magistrate of the District: a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former, is, therefore, legal and sufficient, notwithstanding the refusal by the former to give such sanction himself.—I. L. R., 2 Bom., 384. Now Courts are to be deemed to be subordinate to the Court to which appeals lie. The law now distinctly declares that the superior Court may grant sanction when lower Court

has refused to do so, and may revoke a sanction granted by the lower Court. The Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and that an appeal lies direct to the High Court from the decision of that Court in that matter.—I. L. R., 2 Bom., 481; I. L. R., 7 Mad., 314.

"Or on the complaint of the public servant concerned."—In a reported case, the Deputy Magistrate sent the record to the Magistrate with a letter, saying the prisoners had given false evidence. The prisoners were committed and improperly discharged by the Judge, on the ground that no formal complaint had been made.—6 B L. R., 660.

The words of the former Code "such sanction may be given at any time" have been omitted. Under the former law it was held that sanction may be given even after the order for commitment to the Sessions has been made.—3 B. L R, App. Cr, 10.

Under the present law (s. 537, *infra*), the want of any sanction shall be no ground for reversing or altering a sentence.

The Mamlatdar's Court, constituted by Bombay Act III of 1876, is a Civil Court within the meaning of s. 468 (now 195): therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, shall not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court or of the High Court to which it is subordinate.—I. L. R., 5 Bom, 137.

There being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate is competent, under s. 468 (now 195), of his own motion, to direct a prosecution where a complaint has been entertained and found to be false by a Magistrate subordinate to him.—10 C. L. R., 4.

The word 'party' does not include witness. The sanction required by s. 469 (now 195c) as a condition precedent to the prosecution of a party to a civil suit for forgery of a document given in evidence in such suit, is unnecessary in the case of persons not parties to, but witnesses in, the suit, who are charged with the forgery of the document jointly with a party to the suit.—I. L. R., 3 Mad., 400.

See s. 230, *infra*. When sanction has been given under s. 211, Penal Code, an accused may be convicted under s. 193, Penal Code, on the same facts.—I. L. R., 4 Calc., 713

No sanction is required for the prosecution under s. 193 of a person who makes a false statement before a Police Patel, as a Police Patel is not a Criminal Court.—I. L. R, 4 Bom., 479. 'Criminal Court' is not defined in the present Code, but it is probable that a Police-officer is a 'Court' within the definition of the Evidence Act. See s. 161, *supra*. The present Code substitutes the words "in *or in relation to* any proceeding in any Court" for the words "before or against." *Quære.*—Would a sanction now be necessary for the *abetment* of a false charge? Under the former Code sanction was not necessary.

The sanction to prosecute contemplated in this section (s. 468 of the repealed Code) is not a direction to prosecute, but is a permission granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not. When a Court wishes to institute proceedings, it should proceed under s. 476.—I. L. R, 8 Calc., 435. But when such a sanction has been given, the District Magistrate can, at any moment, of his own motion, institute proceedings.—I. L. R, 4 Calc., 712. See 1 C. L. R., 523.

Prosecution for offences against the State.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

This section refers to the offences in chap. ix. Penal Code. See Act XVIII of 1850 as to acts done in good faith. Under the provisions of s. 1, Act XVIII of 1850, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. It is only if he acts without jurisdiction that the question of good faith arises.—I. L. R., 1 All., 280.

Neither the Corporation of Calcutta, nor any of its members, is a public servant removable by Government.—*Per* WHITE, J., in 2 C. L. R., 520. *Per* AINSLIE, J.—The words 'every officer' in the 10th description of s. 21 of the Penal Code seem rather to point to an individual than to an incorporated body. The prosecution of a Police Patel in Bombay for an offence committed by him in his official capacity needs no sanction, as he is removable from his office without the sanction of Government.—I. L. R., 4 Bom., 357.

Section 466 (now 197) extends to all acts ostensibly done by a public servant,—*i.e.*, to acts which would have no special signification, except as acts done by a public servant Paragraph 1 of s. 466 (197), which mentions a sanction by Government or its deputy, is intended to apply, at least, chiefly to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone, to persons

professing to exercise certain authority, and with that pretext, doing an act which is impeached by a subject on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind.—I. L. R., 2 Bom., 481.

A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction.—I. L. R., 2 Bom., 481.

Sanction of Government is required for prosecution of any Judge, if a complaint is made against him as Judge. The words "removable from office, &c.," have reference only to "public servants." All Judges are public servants, but all public servants are not Judges.—6 Mad. H. C., App., 22.

Prosecution for breach of contract, defamation and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant. In the course of the proceedings, it appeared that the wife had committed bigamy (s. 494, Penal Code). The Magistrate, without a further complaint, committed the woman alone for trial by the Court of Session. *Held*, that the Magistrate had acted within his jurisdiction, s. 198, Criminal Procedure Code, being designed to prevent a Magistrate from inquiring without complaint into a case connected with marriage; but when a case is properly before the Magistrate, he may proceed against any person implicated.—1 C. L. R., 523. See 18 W. R., Cr., 43.

Prosecution for adultery or enticing a married woman.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

As to compounding a case under s. 497, Penal Code, after commitment to the Sessions Court, see note under s. 497, Penal Code, and s. 345, *infra*.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be

reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

See s. 18 of the Court-Fees Act, VII of 1870: "When the first or only examination of a person who complains of the offence of wrongful confinement or of wrongful restraint or of any offence other than an offence for which Police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment."

The accused cannot possibly be prejudiced by the fact of the complaint not having been signed by the complainant. Such an omission is no ground for reversal. See s. 537, *infra*.

Under s. 144 of the former Code it was ruled. that a Magistrate is bound to receive all complaints, whether they be preferred orally or in writing A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the Police-station in the first instance, but is bound to examine the complainant on oath, and pass orders on the case.—*Amir Mahomed* v. *G. Brass*, 14 W. R., 36. The examination of the complainant is not to be a mere form, but an intelligent inquiry into the subject-matter of the complaint carried far enough to enable the Magistrate to exercise his judgment as to whether there is or is not sufficient ground for proceeding.—C. O. No. 4. of 25th February 1873. The Magistrate is bound to receive all complaints, whether they be preferred orally or in writing.—C. O. No. 6. of 16th May 1864. But the Magistrate can insist on the payment of the proper court-fee in non-cognizable cases.

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Postponement of issue of process.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

The words of s. 146 of Act X of 1872 were "or in such other mode as he thinks fit" These words left a wide discretion to the Magistrate. Where the Magistrate called upon the complainant to produce proof *ex parte* to justify the issue of process, and, in default of such proof, dismissed the complaint, the High Court held, that the Magistrate had not acted illegally.—17 W. R., Cr., 3. The present section also leaves a wide discretion to the Magistrate.

Magistrates are cautioned against the indiscriminate use of police agency for the purpose of ascertaining matters as to which a Magistrate is bound to form his own opinion upon evidence given in his presence. This caution is especially needful in respect of summons-cases and all cases regarding offences not cognizable by the Police.—C. O. No. 7, of 20th July 1871.

All orders issued by the Magistracy are supposed to be to the District Superintendent as the head of the Police. They need not be addressed to him, as they are entered in books provided by him for the receipt of such orders, and for the execution of which it is his duty to make arrangements. The District Superintendent at head-quarters and the Subdivisional Police-officer at subdivisional head-quarters are the proper persons to nominate the officer who should conduct the investigation; but in special cases, if the District Magistrate wishes an investigation to be held by any particular officer, he, as head of the police, may instruct the District Superintendent accordingly. Subdivisional officer cannot order inquiry by any other Police-officer than the officer in charge of the station. Whenever possible, however, the Police-officer will comply with their wishes. See Circ. Memo. 9, 1863.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding.

See s. 437, *infra*.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

204. If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

Ordinarily a *purda-nishin* woman of good position should be allowed to appear by pleader, until clear, direct, and reliable *primâ facie* proof is adduced that she has a real charge to answer. -I. L. R., 6 All., 59. See notes under ss. 354 and 503.

'Pleader.' See s. 4 (*n*), *supra*.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Subdivisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

This section is the same as s. 143 of the Code of 1872. Notification of 1st January 1873, empowering all second class Magistrates to commit, is still in force, as it is saved by s. 2 of the Act. In Madras, all Magistrates have been empowered to commit.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Officers in control of jails may commit prisoners or persons employed within the jail to the Magistrate or Sessions Court.—Act II, 1864, B. C., s. 18.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution, or in behalf of the accused, or as may be called for by the Magistrate.

Process for production of further evidence.

If the complainant or officer conducting the prosecution or the accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process, unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Magistrates should note that they are not bound to permit cross-examination in inquiries preliminary to commitment. The Legislature have intentionally omitted to re-enact the 2nd paragraph of s. 191 of the former Code. Where a case is very clear, and the Magistrate knows that he must commit, the public time should not be wasted in permitting cross-examination which is not required by the law. District Magistrates cannot justly complain of the insufficiency of their staff, when they permit their subordinates gratuitously to waste the public time by converting preliminary inquiries into protracted trials.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

If there are any circumstances whatever against the accused, it is obligatory on the Magistrate to examine him. See s. 342, *infra*. Magistrates often infringe this specific direction of the law.

A Magistrate is not bound to commit where the evidence, *if believed*, would support a conviction: if he discredits such evidence, he is competent to discharge the accused.—I. L. R., 5 All., 161.

When several persons are accused of the commission of the same offence, it would be obviously inconvenient if a Magistrate were to punish some and commit others to the Court of Session; and as the Code does not seem to contemplate such procedure, the Magistrate should, if he considers the case to be one for the Sessions, commit all those concerned for trial before that tribunal.—C. O. No. 100, of 27th May 1862.

When charge is to be framed.

210. When, upon such evidence being taken, and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained, and copy furnished, to accused.

In cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge and convict of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the Sessions for murder or culpable homicide not amounting to murder.—C. O. No. 9, of 6th September 1869. Where death has undoubtedly been caused by the prisoner's violence, the Magistrate is bound to send the case to the Sessions Court.—24 W. R., Cr., 24.

"Sufficient grounds for committing the accused for trial." The words in s. 196 of the former Code were "evidence which appears to justify a Magistrate in sending the accused person to take his trial.' That is, the requirements of the present Code are stronger. The ruling of KEMP and JACKSON, JJ. (14 W. R., Cr., 16), that, if the result of the inquiry into the defence leaves the matter in doubt, it is the duty of the Magistrate to commit and leave the Sessions Court to decide which is the true story, is scarcely in accord with the present wording of the law. The Allahabad ruling, quoted under the previous section, appears to be sounder. It is not right for Magistrates to commit in cases where they would not themselves convict. Sections 436, 437, *infra*, provide ample remedies for hasty discharges. It is to be feared that many Deputy Magistrates act in accordance with the ruling in 14 W. R. It is less trouble to commit, and a weak officer perhaps hesitates to throw out a big case sent up by a senior Inspector or perhaps an Assistant Superintendent. Thus meagre, ill-prepared, and ill-sifted cases are, so to speak, chucked at the Sessions Judge, with the natural result of a large number of acquittals. A good and careful commitment rarely results in an acquittal, except, of course, in jury districts.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Quære.—When a Magistrate decides to examine the witnesses of the accused, is the commitment complete on the framing of the charge? Apparently, under s. 213, the commitment is not to be made, nor the reasons for commitment recorded, until the witnesses have been examined.

Order of commitment.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Quashing commitments under section 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

See s. 532, *infra*.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared

before himself, to appear before the Court to which the accused has been committed:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

The meaning of this section is, that if, among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment and inquire whether such witness is material; but the section is not intended to enable the Magistrate to inquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning any of the witnesses cited by the accused.—I. L. R., 3 Calc., 573. But it is difficult to see how, under this ruling, a Magistrate can comply with the requirements of the law. The accused is required to satisfy the Magistrate that there are reasonable grounds for believing the evidence of the witness to be material. Moreover, the ruling is absurd on the face of s. 212, which actually permits the Magistrate to summon and examine the defence witnesses ! !

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or

until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

"Bonds." See note under s. 94, *supra*.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c., to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court, and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(*a*.) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did

not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) A is charged under section 326 of the Indian Penal Code with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) A is charged under section 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place, and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

As to the necessity for specifying time and place, see the report of a very peculiar case in I. L. R., 6 All., 204. With regard to certain offences, such as offences under ss. 411, 414, P. C., the time can only be approximately stated.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A, which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed

A charge under s. 217, Penal Code, must specify the particular direction of law which has been disobeyed and, what the conduct was which contravened such direction.—I. L. R., 2 Bom., 142.

It was held in the same case that when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial.—I. L. R., 2 Bom., 142.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Illustrations.

(*a.*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e.*) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the

21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

See ss. 535, 537.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

The former section enacted that the Court of Session may draw up a charge for any offence which it considers to be proved *by the evidence taken before the committing Magistrate.*

R was committed under s. 202 of the Penal Code for omission to give information of a murder. The Sessions Judge added a charge under ss. 109 and 201 of abetting C, a female co-prisoner charged with having assisted in burying the body of the murdered person. He pardoned C, and examined her as a witness and sentenced R to two years' rigorous imprisonment. *Held*, that as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultrâ vires*, and the conviction or the added charge illegal. *Quære.*—Would such action be legal under the present wording of the law?—I. L. R., 3 Mad., 351.

The Judge has power under this section to expunge a charge before calling upon the accused to plead. There was no such power under s. 446 of the repealed Code. See 7 C. L R., 143.

Court may alter charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

The word 'alter' in this section includes addition. Two Judges of the Bombay High Court thought it must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge. But SCOTT, J., held otherwise and his opinion appears to be the more reasonable. The word 'charge' is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence.. In s. 227 it is used in the former sense. See ss. 271, 308, 310. The words "add to *or otherwise* alter" in s. 226 show that the word 'alter' was intended to include an addition.—I. L. R., 8 Bom., 200.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is, such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or resummon, and examine, with reference to such alteration, any witness who may have been examined.

Effect of material error.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the

accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

See also ss. 535, 537, C. P. C. Both this section and s. 535 contain a specific direction of law, that the Court *shall* direct a charge to be framed. Disobedience of this specific direction of the law is punishable under s. 166, Penal Code. See also s. 535, *infra*.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

Three offences of same kind within year may be charged together.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

The offences need not be offences against the same person.—I. L. R., 9 Calc., 371; I. L. R., 4 All., 147, dissented from. This section merely places a statutory limit on the number of charges which may legally form part of a single trial. There is nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year.—I. L. R., 3 Calc., 540.

A person accused of theft on the 1st August and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time and sentenced to two years' rigorous

imprisonment for each of such offences. *Held*, that the joinder of the charges was regular under s. 453 (now 234), and the punishment was within the limits prescribed by s. 314 (35).—I. L. R., 3 All., 305.

A prisoner cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 413), stolen property. The proper course is to try the accused first for the offences under s. 411, and if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge, under s. 411, could be made or tried by reason of the provisions of this section (s. 453 of former Code).

It was held, under s. 453 of the Code of 1872, that offences under ss. 167 and 466 of the Penal Code are not of the same kind; but in a case in which such offences had been tried together, the High Court upheld the convictions, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted.—I. L. R., 8 Calc., 450.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

II.—Offence falling within two definitions.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

III.—Acts constituting one offence, but constituting when combined a different offence.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I—

(*a.*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(*b.*) A commits house-breaking by day with intent to commit adultery and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(*d*.) A has in his possession several seals knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(*e*.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*.) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.

(*h*.) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.

As to what are separate offences, see ruling in I. L. R., 1 All., 379. Where substantially but one offence has been committed, and the acts,

which are the basis of one charge, are the same as those which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 224 for escape, s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force *in so doing.*—*held*, that separate punishments could not be awarded under each section.—3 B. L. R., A. Cr., 14.

When in the commission of one offence it is necessary to commit some other offence, separate punishments cannot be awarded. It is necessary to use criminal force in order to effect a rescue. Hence the offence is one. But it is not necessary to inflict grievous hurt; and such infliction would be a separate offence (Illus. (*a*) to para 1). In a certain case the prisoners branded a woman on her private parts To do this, it was necessary to outrage her modesty. It was held, that the prisoners could be punished for grievous hurt only, and could not receive a separate punishment under s. 354, Penal Code.

Under this section, the collective punishment which may be awarded for offences under ss 147 and 324 of the Penal Code must not exceed that which may be given for the graver offence.—8 C. L. R., 390; I. L. R., 1 Bom.. 214

Rioting and causing hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—I. L. R., 2 All., 139. If an accused be convicted under ss. 457 and 380, Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—I. L. R., 1 Bom.. 214. See also 12 Bom. H. C. Rep., 147. But the Calcutta High Court think one lump punishment should be given under one section.

There cannot be separate convictions under s. 363 and s. 369, Penal Code. The former offence is included in the latter.—8 W. R.. Cr.. 35. Held, on the facts of the case, that A, who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was proper.—14 W. R. Cr.. 19. It is irregular to convict and punish a person for abetment of theft and at the same time to convict and punish him for receiving the stolen property.—I. L. R., 3 All., 181. Although the offences of rioting and causing hurt may be tried together, it is not illegal to try separately persons charged with such offences. Where a Magistrate holds such separate trials and gives a non-appealable sentence in one case, the Sessions Judge cannot treat the whole matter together so as to give a right of appeal.—I. L. R., 8 Calc.. 481 Separate sentences can be passed for the offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon.—I. L. R, 11 Calc., 349; I. L. R., 7 All., 29, 757.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or

he may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

A person may be convicted of giving false evidence on an alternative charge in the form given in Sched. V; see s. 554, *infra*—13 B. L. R., 324. "By s. 442 (now 554) a charge framed in the form given in the schedule is declared to be a good and valid charge. If it is a good charge to try a man on, it appears to follow of necessity that it must be a good charge to convict him on."—See I. L. R., 10 Calc., 937.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*.) A is charged under section 407 of the Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It

appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged under section 325 of the Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

The accused were charged under s. 149, coupled with s. 325, Penal Code, with committing grievous hurt while being members of an unlawful assembly. The jury convicted under s. 325 only. *Held*, that such verdict was, under s. 457, Criminal Procedure Code (now 238), legally sustainable although that offence did not form the subject of a separate charge. Section 457 (now 238) enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence.—I. L. R., 5 Calc., 871.

See ruling in I. L. R., 3 Calc., 189, quoted under s. 307, *infra*. In that case six persons were tried for murder. Two were found guilty, two not guilty, and the remaining two, though also found not guilty on the charges framed, were found, by a majority of three out of five of the jury, to have been present with the others; but it was added that they only went for the purpose of rioting, which the jury explained to mean "in order to punish the deceased to a certain extent, but not to go so far as to inflict grievous hurt on him." The Sessions Judge, being dissatisfied with this verdict, submitted the case to the High Court. The High Court convicted the two prisoners under s. 143, Penal Code, and sentenced them to six months' rigorous imprisonment.

It is unnecessary to frame separate charges in respect of minor offences of the same class included in an offence of a graver character with which an accused person is charged.—C. O. No. 9, of 26th August 1878.

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(*a*.) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*.) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*.) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Where two persons are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other.—5 C. L. R., 574.

A number of persons may be tried jointly for giving false evidence: but separate charges must be set out against each, specifying the exact words used by each.—9 W. R., Cr., 66.

The prisoners were properly committed by the Magistrate on separate charges, each man's false statement forming a distinct and separate offence. They were tried all together—a course which was, in this case, probably convenient, and by which I do not see that they have been, in any manner, prejudiced.—7 W. R., Cr., 50. See notes under s. 193, P. C.

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

See s. 494, *infra*.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

In England, in summary proceedings before Justices, if the defendant has been duly served with the summons, and fails to appear, the Justices may hear the case *in his absence*, and adjudicate thereon in the same way, as if he had appeared.—11 and 12 Vic., c. 43, s. 2.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

In warrant-cases also a Magistrate may sentence on a plea of guilty.—I. L. R., 3 Calc., 750. See note under s. 255, *infra*.

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

In summons-cases a Magistrate need only make a memorandum of the substance of the evidence of each witness (s. 355).

The accused are bound either to produce their witnesses or to apply beforehand for a summons to enforce the attendance, on the day fixed for the trial. of any witness who is not likely to appear without a summons.—14 W. R., Cr. 76. The Magistrate is not bound to summon witnesses named by the accused. If the accused require the attendance of any witness, he should apply to the Magistrate beforehand to cause his attendance on the day fixed for the trial: if he do not so apply, it is sufficient if the Magistrate record in his judgment the substance of the defendant's answer.—10 W. R., Cr., 16. The Magistrate has the discretion of summoning witnesses for his own satisfaction. But the law does not compel him to do so on the application of either party (7 B. L. R., 568. and *note*) But it is a Magistrate's duty to summon a witness if his evidence appears essential to the just decision of the case. See s. 540.

Acquittal.

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

Magistrates sometimes illegally acquit under this section or under s. 247. Their disposing of warrant-cases under these sections does not operate as an acquittal, and retrial may be ordered. It is probable that the District Magistrate can order a retrial without reference to the High Court; this point has not been distinctly decided. But the last words of s 437 (*infra*) seem to cover the case, as the illegal acquittal must be treated as one of discharge under s. 253, C. P. C. See I. L. R., 11 Calc., 91, where, however, WILSON, J., is mistaken in supposing hurt to be a summons-case. It is punishable with imprisonment for one year, and therefore a warrant-case. See notes under s. 439.

See s. 31 of the Court-Fees Act. "When an accused is convicted of an offence other than an offence for which Police-officers may arrest without warrant, the Court shall, in addition to the penalty imposed on him, order him to repay to the complainant the fee paid on the application or petition, as well as fees for serving processes."

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstaning anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

The accused can only be acquitted if the complainant does not appear *upon the day appointed*. A Subordinate Magistrate calls on a case at 11 A. M., and dismisses it under this section. The complainant subsequently appears. As he has appeared upon the day appointed, the District Magistrate can, without reference to the High Court, direct the case to be heard. So, where complainant did not know of the day fixed, the Madras High Court held there had been no proper or lawful acquittal, and the cases might be revived. Similarly, a District Magistrate can order a retrial, if the procedure laid down in s. 244 has not been observed. See s. 245, there can be no proper or lawful acquittal, unless the Magistrate "has taken the evidence referred to in s. 244."

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting

Withdrawal of complaint.

him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

In cases of contempt of the lawful authority of a public servant, the complainant is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance.—I. L. R, 2 Bom., 653.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

The stopping of proceedings under this section has not the effect of an acquittal. See explanation to s. 403, *infra*.

Frivolous or vexatious complaints.

250. If in any case instituted upon complaint, a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Recovery of compensation.

The sum so awarded shall be recoverable as if it were a fine: Provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

See I. L. R., 10 Bom., 199, following I. L. R., 5 Mad., 381. See s. 252, *infra*, which empowers a Presidency Magistrate to award compensation in *any* case in which any person has caused a Police-officer to arrest another person. Having regard to the technical pitfalls that stand on the way of securing convictions under s. 211, Penal Code, it would be well to extend these provisions as to compensation to all Magistrates and to warrant as well as summons cases.

"Case instituted upon complaint." See definition of complaint, s. 4 (*a*), *supra*. Where a case was sent up by the police under s. 283, P. C., held that compensation could not be awarded under this section.—I. L. R., 7 Mad., 563; I. L. R., 6 All., 96.

In India there appears to be nothing to prevent a person from going first to a Civil Court, and then to a Criminal Court, or *vice versâ*. On this subject an excellent rule has been laid down by the Court of Cassation in France. See notes under this section in my "Comparative Criminal Jurisprudence." In the Italian Code the subject is fully dealt with.

An order for compensation does not prevent the Magistrate from committing the complainant for false evidence or false charge.—6 B. L. R., 296.

A complainant preferred three charges of three distinct offences, two of which fell under this chapter and one was a warrant-case. *Held*, that the Magistrate could award compensation to the accused on finding the two former charges to be vexatious.—*Joyram Hazra*, 13 W. R., Cr., 39.

An order for compensation against a complainant may be made under this chapter at whatever stage the complaint is dismissed.—I. L. R., 6 Calc., 581. The Madras High Court have ruled that there is no appeal against an order giving compensation under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

It is not incumbent on the Magistrate to summon every person named as a witness by the complainant.—23 W. R., Cr., 9. This was ruled under s. 362 of the former Code.

Discharge of accused.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against

the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Magistrates should note carefully the provisions of s. 342. See notes thereunder. If there are any circumstances appearing in the evidence against the accused, that section renders it *obligatory* on all Courts to question him generally on the case, after the witnesses for the prosecution have been examined. Magistrates should also make use of the power the Legislature gives them to put questions to the accused at any stage. By weakly yielding to pleaders, who do not wish their clients examined, Magistrates not only fail in their duty, but they commit criminal offences punishable under the Penal Code.

Under the former Code, when an accused had been discharged under s. 215, and there was no fresh evidence forthcoming which was not before the Court when the first inquiry was held, the Magistrate of the District had no power to revive the proceeding without reference to the High Court.—I. L. R., 2 Calc., 410. But now he has such power under s. 437, *infra*. Such power appears to be necessary, seeing that Subordinate Magistrates can now discharge an accused without hearing all the witnesses for the prosecution.

A Magistrate is no longer bound, before he discharges an accused person, to examine all the witnesses. Under s. 215, expln. 3, of the old Code, he was so bound. See I. L. R., 3 Calc., 389.

When a prisoner has been discharged under this section, the prosecution can be revived, but it must be revived in the same district, unless the High Court order otherwise.—I. L. R., 3 All., 251.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

See s. 164, *supra*. Magistrates may record any statements made by *any* persons as well as confessions made by accused persons. In the great *cause célèbre*, Constance Kent was not accused of any crime when she made her statement.

An accused must not be allowed to plead through his pleader. The accused must *plead* by his own mouth, though of course his counsel or pleader may at the proper time address the Court on his behalf.—15 W. R., Cr., 42.

No confession need be recorded on a plea of guilty. On such a plea a Magistrate may sentence without any further record.—I. L. R., 3 Calc., 756.

Defence.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

As to introduction of further testimony to rebut evidence for defence, number of counsel that may cross-examine in the same case, where there are more than one accused, and whether a pleader may address the Court in trials under this chapter, see notes under this section in my "Comparative Criminal Jurisprudence."

It was never intended that there should be two cross-examinations. As Mr. Whitley Stokes remarked in introducing the new Code of Criminal Procedure, s. 218 of the former Code was very much abused. In one case the High Court thought the meaning of the section was that the Magistrate should, in the first instance, examine the witnesses with a view to seeing if there was a *primâ facie* case against the accused, and then that he should prepare the charge and allow the witnesses to be cross-examined.—17 W. R., Cr., 51.

An accused may waive his right to cross-examine after charge, either by express words, or by allowing the proper time in the course of the trial to go by without availing himself of the right. . . . . It is left to the discretion of the Criminal Court to allow the accused person to recall and examine the witnesses for the prosecution at any period of the defence, when the Court may think such a step right and proper.—22 W. R., Cr., 44.

The new law embodies rulings reported in I. L. R., 7 Calc., 28; I. L. R., 2 All., 253; and 8 C. L. R., 325.

The High Court remarked: "There can be no doubt that the proper and convenient time for cross-examining the witnesses for the prosecution is immediately after the charge has been drawn up. That course is both consistent with the administration of justice as regards the prisoner and with the interests of the witnesses, who of course desire to be discharged. And there is nothing whatever in the law, as explained by this Court, to prevent the Magistrate from taking care that this cross-examination shall take place at that time."—25 W. R., Cr., 48.

It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement.—10 C. L. R., 54. Moreover, the present law compels a Magistrate to file a written statement. It was discretional under the former Code.

Process for compelling production of evidence at instance of accused.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

"Such ground shall be recorded by him in writing." Where a Magistrate refused to summon witnesses without giving any reason, a conviction was upset, and he was directed to hear the witnesses.—I. L. R., 8 All., 392.

Quære.—Is the accused entitled to have witnesses summoned at any time? Under s. 219 of the Code of 1872, it was held that the Magistrate is bound to summon only those witnesses who are named by the accused immediately after the charge has been drawn up. The Magistrate is not bound to summon witnesses named at any subsequent time. If he were so bound, an accused in a warrant-case would be better off than an accused committed to the Court of Session (see s. 211).—7 B. L. R., 561.

AINSLIE, J., remarked :—"If it is said that the words 'shall summon' have no reference to the time when the accused is put on his defence under s. 218 (now 256) or to some time previous to that, I cannot reconcile them with the words 'may at his discretion adjourn'" (see s. 344 of this Code).—See 16 W. R., Cr., 28.

Acquittal.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Even after drawing up a charge, the Magistrate may commit the accused to the Sessions, should he deem it necessary (see s. 347, *infra*).—I. L. R., 3 Calc., 495.

A Deputy Magistrate, after drawing up a charge in a warrant-case, subsequently 'dismissed the case.' *Held*, that such dismissal was an acquittal, and the only remedy was an appeal by Government.—5 C. L. R., 359.

A Magistrate tried and acquitted a person accused of an offence without preparing in writing a charge against him. *Held*, with reference to

s. 216 (now 535), expln. I, that such omission did not invalidate the order of acquittal of such person and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence.—I. L. R., 3 All., 129.

It would be a good thing if a Magistrate or Judge in India were empowered to discharge an accused and to bind him over to come up for judgment, if and when called upon. This can be done in England and France. See C. I. C., cap. viii. (De la liberté provisoire et cautionnement.)

Absence of complainant.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government, may try in a summary way all or any of the following offences:—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) Offences relating to weights and measures, under sections 264, 265, and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code;

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the same Code;

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

In a case in which the accused was charged with theft of a box containing Rs. 50 in cash and of the box worth eight annas six pie,—*held*, that the Magistrate was not justified in considering the box to be of no value, and thereupon trying the case summarily.—22 W. R., Cr., 65.

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid *and sworn to*, the Magistrate must proceed with the case accordingly, *unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.* Therefore a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily.—I. L. R., 4 Calc., 18.

To the same effect is 2 C. L. R., 374; 3 *ibid*, 44; I. L. R., 4 Calc., 18.

An offence under s. 49 of Act XXI of 1856 can be tried summarily, the confiscation provided by s. 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence.—I. L. R., 3 Calc., 366. Two previous rulings to the contrary were overruled by this Full Bench decision. See s. 32, *supra*.

As regards summary trials, the true rule appears to be that a *grave* offence must not be resolved into several *minor* offences in order to give jurisdiction. The police frequently send up petty squabbles about crops or otherwise as riots under s 147, P. C. Five persons carry off a crop with violence or show of violence. A Magistrate may dispose of the case summarily under ss. 323, 379, P. C. This is not resolving a graver offence into *less serious* offences. Riot is punishable with two years, whereas theft is punishable with three years' imprisonment. If it be said that the facts constitute riot (not triable summarily), the simple reply is that they constitute dacoity also, and therefore a Magistrate *must* commit. This is a *reductio ad absurdum*. Those who know the Penal Code well are aware that the same act may fall under several different sections. For instance, theft in a house under s. 380 is triable summarily. But every theft in a house must also fall under s. 451 (not triable summarily). This shows the unwisdom, not to say illegality, of reversing convictions, because the Magistrate *might have convicted* under some other section not triable summarily. What is intended is, that a *really graver* offence (*e.g.*, grievous hurt or hurt with dangerous weapon) should not be disposed of as a lesser offence

(*e.g.*, as simple hurt under s. 323), and even if a Magistrate does this, his proceedings cannot be treated as void under s. 530 (*q*). That section, of course, refers only to cases where a Magistrate is not *empowered by law* to do the several things mentioned,—that is, for instance, where, not having been invested with summary powers, he tries a case summarily. Having regard to s. 529 also, any other interpretation is obviously wrong.

Summary jurisdiction has been sufficiently narrowed by the second paragraph of s. 262, so that many simple cases under cls. (*d*), (*e*), and (*f*) can no longer be taken up summarily. It would be a great pity to curtail summary jurisdiction any further, at a time when there are complaints of the judicial staff of the country being overworked, and when the jurisdiction of Justices in England is being extended more and more, and made to embrace many civil or *quasi*-civil matters.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences;

(*d*) An attempt to commit any of the foregoing offences when such attempt is an offence.

Procedure for summons and warrant cases applicable.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

The provisions of s. 67 of the Penal Code are not affected by this section. See also s. 33, C. P. C., *supra*. Section 262, C. P. C, refers only to substantive sentences of imprisonment, so that a sentence of imprisonment in default of payment of fine may exceed three months.—I. L. R., 6 All., 61.

It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily.—I. L. R., 6 All., 83.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage, and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260, the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Although generally it is not necessary, in cases in which no appeal lies, for a Magistrate to record the reasons for passing his judgment, yet, under cl. (*h*) in case of conviction, he ought to enter in the register to be kept under that section a brief statement of the reasons for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time.—6 C. L. R., 273.

Record in appealable cases.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

Where a Magistrate failed to record *any* reasons for conviction, the High Court set aside the conviction.—I. L. R., 6 Calc., 579.

K. was tried summarily and convicted. The Court of Session quashed the conviction, on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. *Held*, that the Court of Session should not have quashed the conviction merely by reason of such defect; but if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the

substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a retrial with that view,—I. L. R., 1 All., 680. The principle of void *ab initio* is utterly unknown in the criminal law of India. See ss. 529, 530, 537, &c.

Magistrates are not bound to record the substance of every separate deposition, but to state generally what is the substance of the witnesses' evidence.—25 W. R., Cr., 6.

Language of record and judgment.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

'High Court' defined.

266. In this chapter, except in sections 276 and 307, the expression 'High Court' means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Punjab, and such other Courts as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

As amended by s. 8, Act X of 1866.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury; and, notwithstanding anything herein contained in all criminal cases transferred to a High Court under this Code

or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury or with the aid of assessors.

In the case of *Queen* v. *Hari Prasad Gangooly*, JACKSON, J., said "It is observed that the word 'juror' is not defined in the Code, and from this it is said to follow that we must resort to the English definition of juror as being familiar and well ascertained. But neither is the term 'assessor' defined, and it will hardly be contended that we shall derive any information as to the meaning of this term from the English criminal law. The fact is, as most people conversant with the criminal law of Bengal are aware, that both notions, that of juror and that of assessor, are taken, greatly modified and expanded no doubt, from the Beng Reg. VI of 1832, which made, so to say, the first breach in the system of 'trial and punishment under the provisions of the Mahomedan Criminal Code.' A reference to cl. 4, s. 3 of that Regulation will show with what sort of functions the Legislature of that day clothed persons who were called jurors. Under the Code, no doubt, in the places and in respect of the class of offences, and for such period of time as the Executive Government directs, the jury of British India decides upon the facts in criminal trials. But jurors who are not *jurati* at all, who may determine by a prescribed majority, and whose functions may cease at any time on the publication of an order in the *Gazette*, are clearly not the jurors, nor is the system of trial in such circumstances the system of England. We are of opinion that, when the proceedings upon a trial by jury in the mofussil are consistent with a reasonable construction of that part of the Procedure Code where such trial is provided for, the proceedings are good in the absence of any distinct ruling to the contrary, *and ought not to be examined by the light of English rules of procedure*."—8 B. L. R., 562.

Local Government may order trials before Court of Session to be by jury.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

When the accused is charged at the same trial with several offences, of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session with the aid of the jurors as assessors, for such of them as are not triable by jury.

As amended by s. 9, Act X of 1866. See s. 536 and notes thereunder.

Trial by jury is in force in the following districts: 24-Pergunnahs Hooghly, Burdwan, Patna, Moorshedabad, Dacca, and Nuddea, for all

offences under Chaps. viii, xi, xvi, xvii, and xviii of the Penal Code, and also for abetments of, or attempts to commit, any of the above offences. —Beng. Not., 13th October 1862.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

See ss. 492—495, *infra*.

B.—Commencement of Proceedings.

Commencement of trial.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

As to plea of guilty before a Court of Session or Presidency Magistrate, see s. 412, *infra*. If an accused person pleads guilty, it is unnecessary to choose jurors or assessors. See following section, and 2 B. L. R., F. B., 28.

A statement by an accused, tried under s. 211 of the Penal Code, that the original complaint made by him was false, and that he made it unthinkingly, does not amount to a plea of guilty.—I. L. R., 7 Calc., 96.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge, or any portion thereof, is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

Such entry has not the effect of an acquittal. See explan. to s. 403.

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court, the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Where the accused is not a European or American, the jury is to consist of five persons in those districts where jury trial is in force. Notifn., 4th June 1873 (not published in Gazette). See under s. 269.

In trials by jury before the Court of Session, as well as in trials held before a District Magistrate under the provisions of Act III of 1884, in which a European British subject is the accused person or one of the accused persons, the jury shall consist of five persons in the districts named in List A, and of three persons in the districts named in List B.

List A.		*List B.*	
Bhagulpore.	Lohardagga	Backergunge.	Malda.
Burdwan.	Midnapore	Balasore	Manbhoom
Chittagong.	Monghyr.	Bancoora.	Mymensingh.
Chumparun.	Moorshedabad.	Beerbhoom.	Noakholly.
Dacca.	Mozufferpore.	Bogra.	Pooree.
Durbhunga.	Nuddea.	Cuttack.	Pubna.
Hazaribagh.	Patna.	Darjiling.	Rajshahye.
Hooghly.	Purneah.	Dinagepore.	Rungpore.
Howrah.	Sarun.	Furidpore.	Shahabad.
Jessore.	24-Pergunnahs.	Gya.	Singbhoom.
		Julpigori.	Sontal Perghs.
		Khulna.	Tipperah.

Beng. Notifn., 17th June 1885.

275. In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

See ss. 451, 452, 460, *infra*.

There is a notification of the 21st January 1873 relating to trial of Europeans or Americans.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Jurors to be chosen by lot.

Proviso.

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Existing practice maintained.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Persons not summoned when eligible.

Trials before special jurors.

thirdly, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection to jurors.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without grounds stated.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

Grounds of objection.

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

The fact that a person is a clerk in the office of the Magistrate of the District is not sufficient to disqualify him from sitting on a jury.—I. L. R., 7 Calc., 42. As to exemptions, see s. 320, *infra*.

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278, and allowed.

Foreman of jury.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Swearing of jurors.

282. If in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

Procedure when juror ceases to attend, &c.

In each of such cases the trial shall commence anew.

As to practice in England and France, see notes under this section in my "Comparative Criminal Jurisprudence."

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the

Opening case for prosecution.

offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Examination of accused before Magistrate to be evidence.

See ss. 30, 80, Evidence Act, and s. 533, *infra*. Even though an accused should retract his confession before the Sessions Court, still the latter can convict him on it, if satisfied that it was voluntarily made.—6 W. R., Cr., 81, *et passim*.

(*a*.) The "examination of the accused person," which is directed by s. 248 (now 287) of the Code of Criminal Procedure "to be given in evidence at the trial," should be put in and read as part of the case for the prosecution before the accused person is called upon to enter on his defence.

(*b*.) So also should be the examination of a medical witness which the Court is directed under s. 323 (now 509) to "receive as *primâ facie* evidence;" and the examination of a witness in a case in which it "may be given in evidence" under s. 33 of the Evidence Act (if it is considered desirable on the part of the prosecution to put in such examination).—C. O. No. 11, of 2nd September 1867.

When confessions or examinations of accused persons made before a Magistrate form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out.—C. O. No. 4, of 10th August 1872.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

A Judge may not altogether discard the evidence given before himself, and convict solely on the evidence given before the committing Magistrate. Section 249 (now 288) authorizes him to take particular statements made before the committing Magistrate as true, notwithstanding that they are subsequently denied or statements inconsistent therewith made.—12 B. L. R., App., 17.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

If he says that he does not, the prosecutor may sum up his case ; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

As to the introduction of fresh testimony for the prosecution after the defence has closed, see notes under this section in my "Comparative Criminal Jurisprudence."

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

Where the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, it commits an irregularity ; but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside.—4 C. L. R., 338. See s. 537, *infra*.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance ; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply

The fact that the accused has put in certain documents and proved them by cross-examining witnesses for the prosecution does not entitle the prosecutor to the right of reply —I. L R, 10 Calc, 1021.

View by jury or assessors

293 Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror or assessor may be examined

294 If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking-up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

"The Judge," says Sir James Stephen, "ought not to conceal his opinion from the jury, nor do I see how it is possible for him to do so, if he arranges the evidence in the order in which it strikes his mind. The mere effort to see what is essential to a story, in what order the important events happened, and in what relation they stand to each other, must of necessity point to a conclusion. The act of stating for the jury the questions they have to answer, and of stating the evidence bearing on those questions and showing in what respects it is important, generally goes a considerable way towards suggesting an answer to them, and *if a Judge does not do at least as much as this, he does almost nothing.*"—Hist. Cr. Law, Vol. I. p. 455.

A charge should be a statement of the evidence *pro* and *con*, with a running commentary as to its agreement or disagreement with the other facts of the case.—1 W. R., Cr., 26.

In a trial before a Sessions Court, the attention of the jury may be called to discrepancies between the evidence given by witnesses in such Court and that given before the committing Magistrate, without putting questions to the witnesses and without the depositions before the Magistrate being put in.—6 C. L. R., 890.

It is not necessary that the direction to the jury should be reduced to writing before delivery; but it is essential that the statement or heads of charge (see s. 367) placed upon the record should represent with absolute accuracy the substance of the charge, and be such as to enable the High Court, in the event of an appeal, to see distinctly whether the case was fairly and properly placed before the jury.—C. M. No. 2, of 4th March 1875.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*.) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*.) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

The question whether a communication between the accused and a witness is privileged, is a question of law for the Judge to decide. Communications between mukhtars and their clients are not privileged within s. 126 of Act I of 1872.—1 B. L. R., 8.

TINDAL, C. J., said in *Davidson* v. *Stanley* (2 Manning and Granger's Rep., p. 728): "It is no objection that a Judge lets the jury know the impression which the evidence has made upon his own mind.

"It is the practice for the Judge at *nisi prius* not only to state to the jury all the evidence that has been given, but to comment on its bearing and weight, and to state the legal rules upon the subject and their application to the particular case, and even to advise them as to the verdict they should give, so that it may accord with his view of the law and with justice. Indeed, without this assistance from the Judge, few juries would, in a contested case, be able to come to a unanimous opinion, being frequently left in a state of great perplexity by the influence of the speeches of the contending leaders, &c." PEACOCK, C.J., after quoting the above, said in a certain case: "If the above remarks as to the impracticability of juries coming to a just conclusion are correct as regard the administration of civil justice in England, they are still moreso as regards the administration of criminal justice in the mofussil, where trial by jury is in its infancy, and where the persons of whom juries are generally composed are necessarily more dependent upon the Judge than they are in England for sound and proper advice and assistance as regards the degree of weight which may be safely and fairly attached to the testimony of particular witnesses."—5 W. R., Cr., 87.

Duty of jury. 299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual

sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which, according to law, are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is, whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

As to what are questions for the Judge and what for the jury, see French and American decisions quoted under this section in my "Comparative Criminal Jurisprudence."

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

It is only when the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law.

Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him is that laid down in the fifth clause of s. 263, Criminal Procedure Code (now 307).—I. L. R., 5 Calc., 871.

Verdict to be given on each charge.

Judge may question jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

The law does not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict. and such a course is desirable in the ends of justice.— 1 C. L. R., 275. This can only be done when it is necessary in order to ascertain what the verdict of the jury really is.— 21 W. R., Cr., 1.

When the Judge puts questions to ascertain what a verdict is, there can be no verdict recorded until the last of the questions has been answered.—21 W. R., Cr., 2. See also I. L. R., 8 Bomb., 211. See notes under this section in my "Comparative Criminal Jurisprudence."

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

In a trial by jury, a verdict was returned on all the charges (some of which were under s. 233 (now 269) triable by jury and some with assessors) of not guilty by a majority of four to one. *Held*, that the Judge could not regard the trial on the latter charges as a trial with assessors, and, concurring with the minority, convict and sentence the accused. He should have accepted the verdict of acquittal and referred under s. 307.—4 C. L. R., 405. See s 269.

The verdict of a jury should be set aside, when it is clearly and patently wrong, or unsustainable on the evidence.—14 B. L. R., App., 2, *note*. In another case the Court remarked: "The evidence against the prisoners, in whose interest the Judge has referred this case to the High Court under s. 263 (now 307), is certainly not very strong, inasmuch as it consists solely of the statement of the prosecutrix. Nevertheless, the evidence is quite sufficient, if believed. The jury did believe it; and how can we say they were wrong in doing so? it is as

likely as not they were right . . . . . The Court should exercise the powers vested in it by s. 263 only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong"—13 B. L. R., App, 19.

Where there are reasons for suspicion sufficient to warrant a jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubt raised by inconsistencies in that evidence, although another jury might have come to a different conclusion, the High Court will not interfere. It must be shown that the verdict of the jury is certainly unreasonable and perverse.—*Queen* v. *Sham Bugdee and others*, 20 W. R., Cr., 73, cited and followed; 2 C. L R., 518.

Where a jury are not unanimous in their finding, and the Judge dissents from the opinions expressed by them, on the case being referred under s. 307, the High Court is competent to find the prisoner guilty notwithstanding an acquittal by the majority of the jury. It is the duty of a Judge, in sending up a case to the High Court under s. 307, when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed.—I. L R., 3 Calc, 623. Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by s. 238, Criminal Procedure Code,—*held*, that the High Court could, on the case coming before them under s 307, find the prisoners guilty of such offence.—I. L. R., 3 Calc. 189.

The Code of Criminal Procedure, s. 307, casts upon the High Court the duty both of Judge and jury; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior Courts in England, it will, as far as may be, be guided by the principle of English law that the verdict of a jury will not be set aside unless it be perversely and patently wrong, or may have been induced by an error of the Judge. In a proper case, however the High Court will rectify the verdict of a jury.—I. L R., 1 Bomb., 10.

WEST, J., remarked: "We think that, by our rectifying a jury's verdict in a proper case, we shall increase, not diminish, their sense of responsibility. Burke, profoundly versed in the principles of the British constitution, said of juries: 'I will make no man, nor any set of men, a complement of the constitution.' In this country, we must never let our acquiescence grow into a betrayal of justice. When juries know that their verdicts are liable to the scrutiny and supervision of this Court, they will feel the necessity of exercising conscientious deliberation in arriving at their verdict. The same check will prevent temptations to a wilfully wrong verdict from being held out to them. It is our duty, in the present case, to satisfy ourselves that the verdict of acquittal is proper, or at least sustainable; and if we find that it is not, the law enjoins on us to set it aside and pass the right judgment ourselves."

The ruling in the case of *Dhunnum Kazi* (I. L. R., 9 Calc, 53) indicates that NORRIS, J., could not have been acquainted with all the previous case-law on the subject. This was a clear case of forgery, in which two juries had convicted in Hooghly. The case was transferred to Burdwan on the ground that GRANT, J. (then Judge of Hooghly), had misdirected the jury. The Burdwan jury acquitted, and the Judge made a reference under s. 307, as he was bound to under the law. In this case the answers given by the jury to questions put to them showed that they really found the prisoner guilty. NORRIS, J., refused to consider these answers. Perhaps there never was a clearer case of a perverse and patently wrong verdict, and if the ruling of NORRIS, J., is to be followed,

it would be just as well to repeal s. 307, for this is what his ruling has virtually done. His remarks are diametrically opposed to those of WEST, J. (a jurist as well as a sound criminal judge), and are not likely to have a good effect on trial by jury, or to increase a jury's sense of responsibility. The ruling is, moreover, opposed to other rulings, *e. g.*, 1 C. L. R., 275, and 2 C. L. R., 1.

The section gives the Sessions Judge no option. He *must* refer if he disagrees with the verdict. But an illegal practice seems to be growing up of *never referring if the jury are unanimous.*

G.—Re-trial of Accused after discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

Delivery of opinions of assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Judgment.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

The Court of Session acquitted an accused person after his defence had been heard, without asking the opinion of the assessors *Held*, that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, with reference to ss. 283 and 300 (now 537), a ground for revisional interference.—I. L. R., 1 All., 610.

There is nothing in the Code to prevent a Judge from summing up the evidence to the assessors.—7 B. L. R., 63.

The record of the opinion of each assessor should appear at the commencement of the judgment of the Sessions Judge. It is not sufficient that this record should contain a mere verdict of guilty or not guilty: what the Court require is not only the result arrived at by each assessor, but, if possible, the reasons by which each assessor arrived at that result, that is, the grounds of his opinion. While avoiding prolixity, a Sessions Judge should be careful to be intelligible and precise in recording such opinions.—C. O. No. 4, of 23rd June 1865.

I.—Procedure in case of previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309 shall be modified as follows:—

(*a.*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b.*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c.*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

It is difficult to reconcile this section with s. 54 of the Evidence Act. In a prosecution under s. 413, P. C., previous convictions under s. 411 may be proved.—I. L. R., 8 Calc., 450.

J. — List of Jurors for High Court, and summoning Jurors for that Court.

Jurors' book.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

312. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor-General in Council in the case of the High Court at Calcutta, and in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of lists, preliminary and revised.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the courthouse.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those

Number of jurors to be summoned in Presidency-town.

who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permis-

sion of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely :—

(*a*) Officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the Preventive Service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post Office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641;

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode, and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

I believe that such lists have not really been made out, and it would be a heavy task to do so. With reference to s. 320 (*k*) it was contemplated to exempt by a general order all persons living in Thanas distant from the head-quarters of station; but the High Court and Government of India were of opinion, that this could not be done, as s. 320 (*k*) contemplates special exemptions. The former Code (s. 400) enacted that the list should contain only the names of persons residing within ten miles from the Court of Session, or such other distance as the Local Government might direct. Notifications were issued under that section, but they are not in force now, as the law now requires that the list should contain the names of all persons in the district liable to serve.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the courthouses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions courthouse, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested

in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

325. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

District Magistrate to summon jurors and assessors.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Power to summon another set of jurors or assessors.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and service of summons.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

330. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court

Penalty for non-attendance of juror or assessor.

after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

Power of Advocate-General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Place of trial of European British subjects.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his

reasons for so doing; and when any Magistrate has made such tender, and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

"When any Magistrate has made such tender . . . . . he shall not try the case himself." The pardon still holds good, although it may turn out that the offence is one which may properly be dealt with by a Magistrate. But the Magistrate who tendered the pardon must not *try* the case himself. He may of course commit it.

If a person is pardoned in a case not exclusively triable by the Court of Session, and on the faith of such pardon makes a full and fair disclosure, he ought not to be prosecuted, though the pardon be illegal.—I. L. R., 1 Bomb., 619; *R.* v. *Rudd*, 1 Cowp., 331, quoted.

Persons who may have been concerned in an offence may be examined as witnesses without being pardoned, provided that they are not actually accused persons when admitted as witnesses.—*Ibid.* It is not necessary to pardon a man before he can be examined as a witness, where he is only suspected of having been concerned in the offence, as, for instance, where he has been discharged by the Magistrate for want of evidence.—7 W. R., 44.

A conviction proceeding upon the uncorroborated testimony of an accomplice is not illegal—s. 133, Evidence Act; see also s. 114, ill. (*b*), *id.* The Courts always require some corroboration.—19 W. R., Cr., 16, *et aliunde.*

Accused persons, not having been legally pardoned, cannot be examined as witnesses, until they have been acquitted, or discharged, or convicted.—I. L. R., 1 Bomb., 610. If A and B are found guilty of theft by the police, and A is sent up, and B absconds, and A is convicted. Then, when B is subsequently caught and tried, A may be examined as a witness for or against him, as he is no longer an accused person, having been convicted.

Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case.—*held*, that the tender of pardon to such person not being warranted by s. 347 (now 337), he could not legally be examined on oath, and his evidence was inadmissible. *Held* also, that the statement made by such person was irrelevant and inadmissible as a confession, with reference to s. 344 (now 343), Criminal Procedure Code, and s. 24 of Act I of 1872.—I. L. R., 2 All., 260.

In England, persons *known* to be accomplices need not be pardoned before giving evidence. The French Code is admirably adapted for inducing accomplices to give information in certain classes of offences. The Chinese Code even goes so far as to freely pardon any person who surrenders himself and admits having committed an offence, *before it has been* otherwise discovered. See notes under this section in my "Comparative Criminal Jurisprudence." "I think that a general law promising impunity to an accomplice who exposes a crime, would be preferable to a special declaration in a particular case, because in this way the mutual fear which each accomplice would have of his own risk would tend to prevent their association."—Beccaria, chap. xiv.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

It is doubtful if the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn.—7 C. L. R., 66. Such deposition is inadmissible.—I. L. R., 5 All., 217. When a conditional pardon is withdrawn by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.—7 C. L. R., 66. It is not necessary that the commitment of an approver, who has broken the conditions of his pardon, should be made before judgment is passed by the Sessions Court. This was necessary under s. 349 of the repealed Code.—See I. L. R., 8 Calc., 560.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Pleaders have no right to appear and be heard in proceedings under Chaps. X, XI, XII of this Code, nor in any proceedings in which the commission of an offence is not the subject of inquiry.—17 W. R., Cr., 37.

The writing a petition for a party who presents it in Court is not acting as a mukhtar within the meaning of s. 11, Act XX of 1865 (s. 9 of Act XVIII of 1879); and the writer is not liable to punishment under s. 13 (now 32) for practising as a mukhtar without a certificate.—9 B. L R., App, 18. See Act XVIII of 1879, s. 11, *infra*.

With the permission of the presiding Judge or Magistrate, any advocate or pleader may address the Court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleaders or his client consents to this being done.—C. O No. 4, of 15th March 1869.

"Pleader." See s. 4 (*n*), *supra*. But see s. 440, *infra*.

Magistrates should not, by the indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials, deprive parties of legal aid which they can frequently obtain at a moderate cost.- C. O. No. 13, of 29th August 1870.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

This section does not apply to a person who is of unsound mind; it applies to persons who are unable to understand the proceedings from deafness, or dumbness, or ignorance of the language of the country, or other similar cause.—I. L. R., 5 Bomb., 262. The High Court, under the circumstances of the case which came before it under the last clause of s. 186 (now 341), set aside the conviction of the prisoner, who was deaf and dumb, and directed that he be admonished and discharged.—22 W. R., Cr., 35. In another case they passed sentence upon a deaf and dumb prisoner.—22 W. R, Cr, 35, 72.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

"*Shall* for the purpose aforesaid, &c." If there is any evidence against the accused, the Court is *bound* to examine him. The matter is not optional, and a Magistrate, who omits to examine an accused, deserves to be prosecuted under s. 166, Penal Code, just as much or more than a Police-officer who infringes the directions of the law contained in ss. 154, 155, 157, 167, 169, 172, &c.

The accused person knows most about the case. If he is innocent, he has an opportunity of explaining facts which tell against him. If he is guilty, and his replies tend to implicate him, so much the better for the administration of justice. If an accused refuse to answer, the Magistrate may, and no doubt should, as a rule, presume that the answer, if given, would be unfavourable to him.—Act I of 1872, s 114, illus. (*h*).

The Calcutta High Court, in Circular No. 13 of 1864, remarked on the expediency of examining the accused person: "It is obvious that the truth of any ordinary case will be best elicited, and obscure points will be cleared away, by any explanation that an accused may wish to give."

Sir James Stephen has well pointed out the advantage of examining the accused, both to the Court and to the accused himself. He concludes: "For these reasons, *as well as for its obvious tendency to convict the guilty*, I think that the direct and explicit investigation of the prisoner, both at his trial and before the committing Magistrates, is most desirable. It would render sham defences impossible, and would cut down by the roots that bastard ingenuity which counsel acquire in inventing defences for prisoners, which they would never think of setting up for themselves—defences grounded not on the truth of the case, but on the defects of the prosecutor's evidence."

It was held under the former Code, that the authority given to a Sessions Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Judge endeavour, by a series of searching questions, to force the accused to criminate himself. The real object in the power given to the Court under s. 250 (now 342) is to enable the Judge to ascertain from time to time from the accused such explanation as he may desire to give regarding any statement made by the witnesses, or, at the close of the case for the prosecution, to elicit from the accused how he proposes to meet such portions of the evidence which, in the opinion of the Court, implicates the accused in the commission of the offence with which he stands charged.—I. L. R., 6 Calc., 96.

Some Indian High Court Judges have been opposed to the examination of accused persons, and, as in many other cases, their opposition has proceeded on the assumption that the English law is the perfection of human reason combined with a lamentable ignorance or a very imperfect acquaintance with such law. During the last twenty years many statutes have been passed making accused permissible, and in some cases even compellable, witnesses, and that too *on oath*. See notes under this section in my "Comparative Criminal Jurisprudence." The

greatest jurists and criminal lawyers have long been of opinion that the accused should be examined in chief by his own counsel, and cross-examined by the counsel for the prosecution. Last year, Lord Bramwell introduced a bill in the House of Lords, permitting accused persons to be examined on oath in all cases. The Codes of other countries permit the examination of the accused; and, as Sir James Stephen remarks, if parties are competent witnesses in civil cases, there is no reason why they should not be equally so in criminal cases.' In the mofussil the strange and illegal spectacle is often witnessed of Courts refraining from putting questions, though there may be much in evidence against the accused, simply because counsel or pleaders have persistently objected! Nor are such illegal proceedings unknown in Calcutta.

As to the difference between the former Code and s. 342 of the present Code, Sir James Stephen remarks: "The words specifying the purpose for which questions are to be asked were not in the Code of 1872, which authorised the examination of the accused without assigning any reason for it. Perhaps the expression was introduced in the Code of 1882, in order to soften *what many people consider a harsh proceeding!* (these are the pseudo-lawyers who worship English criminal law on the *ignotum pro magnifico* principle). For my own part I regret the alteration. It will either be inoperative or most embarrassing, and *it looks like an apology for what does not require one.* It is, however, hypocritical, for the Code contains no provision as to what is to happen if the questioning does not conform to the directions of the Code, and it specifically enacts that 'the Court and jury (if any) may draw such inference from' the refusal of the accused to answer or from his answers as they please. Besides, in practice, every question one could want to ask might be justified by the terms of the section; *e. g.*—'the witnesses say they saw you at this place. Were you there or not, and, if not, where were you?' The words thus make hardly any difference." Whatever the nature of the questioning, it cannot constitute an irregularity under s. 530, C. P. C.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

Remand.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms, as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

But under s. 508, where a commission has issued, there may be a remand for more than 15 days.

Where an accused is sent up by the Police, in a non-bailable case, the Magistrate may remand him to custody without recording any evidence. But the evidence should be recorded as early as possible.—I. L. R, 6 Mad., 63. When an accused person is first brought before a Magistrate, it is ordinarily sufficient to show by the evidence of a Police-officer that the police are in possession of information believed to be reliable; but when the accused is again brought up and a further remand is needed, some direct evidence of the guilt of the accused should be required to justify the Magistrate in refusing bail, and with each remand the necessity for production of evidence of guilt becomes stronger.—I. L. R., 6 Mad., 69.

"Provided that no Magistrate shall remand an accused person *to custody*." If the accused be on bail, the remand may exceed fifteen days, but the time must be reasonable A Sessions Judge may, of course, remand a case from one Sessions to the next Sessions. Without the consent of parties, and in the absence of urgent necessity, no criminal inquiry or trial shall be held on a Sunday or gazetted holiday.—C. O. No. 5, of 10th January 1880.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt ...	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman ...	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter ...	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may,

with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

See note under s. 214, Penal Code.

As to law of other countries, see notes under this section in my "Comparative Criminal Jurisprudence." I submit that the ruling at I. L. R., 10 Calc., 551 (which avoids the real difficulty) is open to question. The words "composition" and "compounding" must be read in the light of s. 214, Penal Code. As regards offences mentioned in the second column of the table, it is not an offence for the injured party to take a gratification in consideration of his not proceeding against the offender; it is so in other cases. But if a complainant allows a trial to commence, the matter is then in the hands of the Court. Section 248, *supra*, points to this conclusion. The logical conclusion of the ruling above quoted (and the ruling is worthless if it cannot be pushed to its logical conclusion without bringing about a *reductio ad absurdum*) is, that a Magistrate may have heard the evidence on both sides and arguments of pleaders, and may have put off the case merely for decision, and yet that, even at that stage, the complainant may compound and thereby prevent any decision being given. In England, cases sent up by the police can only be withdrawn with the permission of the Court, and such a rule is even more necessary in India. Sections 497, 498 stand on a different footing, as they require a sanction, and even so it has been doubted whether such cases could be withdrawn after commitment or at the stage of appeal. Offences under ss. 493—496, P. C., can only be taken cognizance of on complaint; but, if once instituted, cannot be compounded.

"No offence not mentioned in this section shall be compounded." I think this means that there must not be any *unlawful composition*. But cannot certain cases be *withdrawn* with the permission of the Court? See on this point notes under this section in my "Comparative Criminal Jurisprudence."

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should

be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when, after commencement of inquiry or trial. Magistrate finds case should be committed.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Section 347 authorizes a Magistrate, after a charge has been drawn up, to stop further proceedings and commit for trial. 'Trial,' according to the definition in s. 4 of the former Code, means "the proceedings taken in Court after a charge has been drawn up." There is no definition in the present Code.—I. L. R., 3 Calc., 495.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

See s. 221, *supra*, and notes under s. 75, Penal Code.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Subdivisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

"Judgment, sentence, *or order*." The Magistrate to whom proceedings are submitted under this section may, if he likes, commit to the Court of Session, instead of disposing of the case himself.—I L R., 4 Bomb., 240, and 1 Mad., 289. But *contra*, see 10 W. R., Cr., 50. It is not competent for a Magistrate, to whom a case has been referred under this section, to return the case to the referring Magistrate, on the ground that, in his opinion, the latter has power to pass an adequate sentence. All orders passed after a case has been so returned are illegal.—6 C. L. R., 276. Nor can he transfer it to another Magistrate, but must dispose of it himself.—I. L R, 4 Mad., 233.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial;

Provided as follows:—

(*a*) In any trial, the accused may, when the second

Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard :

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby ; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

"Magistrates subordinate to the District Magistrate." See s. 17, *supra*.

"Inquiry." See s. 4 (*o*), *supra*. In inquiries preliminary to commitment, the accused has no right to demand that the witnesses be re-heard ; and apparently he has not the right in any of the miscellaneous inquires (ss. 117, 145, &c.) under the Criminal Procedure Code.

With regard to cases before Benches, in which the evidence for the prosecution is perhaps heard on one day, and the evidence for the defence on another, it is sufficient if any one of the Magistrates present at the first hearing be present at the adjourned hearing. See para. 8 of the rules for Benches printed under s. 16, *supra*. But where a Bench acquitted an accused (none of the Magistrates being the same as those who had adjourned the case for the evidence for the defence), the High Court set aside the acquittal and ordered a retrial.—I. L. R., 12 Calc., 558.

The power given by this section to a Magistrate does not extend to a Sessions Judge.—I. L. R., 3 Mad., 112.

It has been held that, notwithstanding the introduction of the words 'the accused person' and 'conviction,' the provisions of s. 328 (now 350) apply to an inquiry instituted under s. 491 (now 107). Criminal Procedure Code, with a view to enforcing the giving of security to keep the peace.—4 C. L. R., 452. This is a very doubtful ruling.

Detention of offenders attending Court.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance, and which, from the evidence, he may appear to have committed ; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

As to how far Courts are or should be open, see notes under this section regarding the law of other countries in my "Comparative Criminal Jurisprudence." In Louisiana (C. P. C., s. 510), where the evidence is likely to be indecent, no person is allowed to be present except the Magistrate, public prosecutor, accused and his counsel, complainant, certain officers of justice, the witnesses, and such persons, not exceeding ten for each party, as the complainant and the accused may desire to have admitted. In making the report of any such trial, the reporter *shall not give the details of the evidence, or publish the names of the witnesses.*

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII, and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held*, that the depositions were illegally taken, and, therefore, could not sustain a charge.—1 B. L. R., Or Cr., 37.

"Pleader." See definition of 'pleader,' s. 4 (*n*), *supra*.

As to custody of witnesses, their exclusion from Court, &c., see notes under this section in my "Comparative Criminal Jurisprudence." In some countries evidence taken out of Court is admissible even in criminal trials. Sheldon Amos, speaking of civil procedure, remarks: "There are occasions in the process of conducting certain classes of suits in which it may be desirable to have the evidence received in the first instance out of Court, and only the result if it produced in Court, if called for . . . . . In some cases this evidence thus received out of Court may consist of the reported proceedings of an inferior Court

which has made a preliminary investigation. The report of these proceedings may be turned to account at the actual trial, especially in criminal cases, either because other evidence proves defective, or because it seems hopelessly contradictory, and needs all the help that can be obtained from any quarter." Science of Law, p. 305. See ss. 148, 288, C. P. C.

Manner of recording evidence outside Presidency-towns.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Omission to give oath does not invalidate proceedings (Act X of 1873, s. 13). The word 'omission' includes any omission, and is not limited to accidental or negligent omissions.—13 W. R., Cr., 31; 14 B L R, 294 and 295, *note*. The following are the forms of oath and affirmation for witness: *Oath.*—I swear that the evidence which I shall give in this case shall be true, and I will conceal nothing, and that no part of my evidence shall be false. *Affirmation.*—I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

Christian witnesses, interpreters, and jurors, to whom oaths are administered, are to be sworn upon the New Testament. In other cases, the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.—C. O. No. 12, of 7th June 1873.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

When, during the trial of a summons-case, it may appear to the Magistrate that a witness is giving false evidence, so that criminal

proceedings against such witness are likely to be necessary, the Magistrate will exercise a sound discretion in taking down, under s. 359, at least the evidence of this particular witness at length in the manner prescribed in ss. 356 and 360.—C. O. No. 4, of 30th March 1864.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do

so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court although such language is not his mother-tongue.

See Bengal Government Notifications, 30th June 1864 and August 6th, 1865, permitting Magistrates and Courts of Session to take evidence under this section. Native Deputy Magistrates are, from time to time, empowered to take down evidence in the English language.

Option to Magistrate in cases under s. 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

This section is for the protection of witnesses only, and the fact that witnesses did not understand their depositions when read over, although they may not have required them at the time to be interpreted, affords no ground for an application by the accused to set aside a conviction.—7 C. L. R., 393.

"Or s. 357." This will entail great trouble on Courts. It was not necessary to read over to a witness evidence taken under s. 335 of the former Code.

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

The circumstance that the evidence of the Civil Surgeon given in English was not interpreted to the accused, was held to be of small importance where it was understood by the prisoner's counsel and all necessary questions were put to the witness.—24 W. R., Cr., 50.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Article 58 of the Louisiana Code of Evidence commences as follows :—"It is the duty of the Judge to prevent any harsh or threatening language from being used towards a witness for the purpose of confusing or intimidating him."

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a

memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

See s. 533, *infra*.

When confessions or examinations of accused persons made before a Magistrate form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out.—C. O. No. 4, of 10th August 1872.

See s. 342, *supra*, and my "Comparative Criminal Jurisprudence." In some countries an accused is not only a *competent* witness, but he is *made* to give his own account of the circumstances, and to explain away if he can, subject to cross-examination, all that appears suspicious against him. As to the examination of the prisoner, Sheldon Amos, in his 'Science of Law,' remarks :—" It may be that the English method, especially in the actual conduct of a trial, by not admitting the evidence of a prisoner, errs too much in one direction ; indeed, so much as often to defeat the object intended. For an innocent person may only be able to establish his innocence by giving a connected account of a series of transactions which, taken by themselves, and apart from such explanatory evidence, are wholly adverse to him. It might be better at the least to allow a prisoner to be examined by the Judge, the English rules of evidence which confine the whole inquiry to matters immediately connected with the actual crime being quite sufficient protection to the innocent against inquisitorial and irrelevant questions . . . . By the continental method, the Police, with the help of the public prosecutor, frame a document, the general upshot of which is to identify the accused with the person who committed the crime. The proof of this identification may depend upon an indefinite number of minute circumstances connected with the biography of the prisoner, and with his moral, social, and political proclivities from his youth up. In itself, so long a chain of circumstantial evidence may be of the highest value; but the evil is that it is this document which furnishes the groundwork of the Judge's examination of the accused." There is no danger, as long as the evidence given in presence of the accused forms the basis of his examination.

It was held under the former Code, that it is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded.—I. L. R., 5 Calc., 826. But now, if it is practicable, the examination of the accused is to be recorded in the language in which he is examined.

In a case where an objection was taken that the statement of the accused had been taken down continuously, instead of in the form of question and answer, the High Court remarked : "The matter is of no real importance, because there cannot be the least doubt that the prisoner did make the statement which bears his signature."—24 W. R., Cr., 50. See s. 537. See also 1 C. L. R., 1 ; I. L. R , 8 Calc., 616 ; and s. 533.

A certificate, which contained the words 'taken by me,' but in which the Magistrate omitted to record that the prisoner's statement was taken in his hearing, was treated to be substantially a compliance with s. 346 (now 364).

A confession made by an accused person before a Magistrate, who has jurisdiction to deal with the matter to which it relates, may be made

the commencement of a trial or inquiry, and be treated as a confession under s. 346 (now 364), whether or not the case be still under the investigation of the Police.—6 C. L. R., 289.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the chief Court of the Panjab may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

Sentence of transportation.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

See Act IX, 1882.

Court not to alter judgment.

369. No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in section 395 or to correct a clerical error.

A Division Bench of the High Court has not, under s. 439, power to review its judgment pronounced on revision in a criminal case.—I. L. R., 10 Bom., 176, following I. L. R., 7 All., 672. See also 5 W. R., Cr., 61 The reservation in this section is sufficiently accounted for by supposing it to refer to the power of review given to the High Court by s. 434. If any error is committed, the Government can always be applied to to exercise their prerogative of remitting a sentence in whole or in part.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

See s 548, *infra*. This section enacts that a copy shall be given to the accused, whether he has been convicted or not.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373 In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Sessions Judges should give every facility to Magistrates and District Superintendents of Police for inspecting the records of cases in their

Courts, and for the preparation of copies by clerks sent by the District Magistrate, care being taken that the records are not removed from the Judge's Office.—C. O. No. 5, Sup. 21, 1880. *A fortiori*, District Magistrates should allow District Superintendents every facility for inspecting records. But the former should not permit the latter to record remarks criticising or cavilling at the procedure or decisions of Subordinate Magistrates. It is better that any objections should be communicated verbally to the District Magistrate.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made, nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have

convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Where the condition of the convict (who had cut his throat severely after the conviction) rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one of transportation for life.—2 C. L. R., 215.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

CHAPTER XXVIII.

OF EXECUTION.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

The date fixed by the Sessions Court, in its warrant for the execution of a sentence of death, shall not be less than fourteen, nor more than twenty-one days from the date of the issue of such warrant.—C. O. No. 2, of 5th May 1876.

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

A warrant issued under s. 307 (now 386), Code of Criminal Procedure, for the levy of a fine, should be directed to a Police-officer, and the authority issuing it should set a time for the sale and for the return of the warrant. If no one claims the property distrained, the police have the power of selling it within the time specified in the warrant, without any previous reference to the Magistrate; if a claimant come forward, then the ownership of the property distrained must be determined by the Magistrate, and not by the police. If at any time subsequent to the return to the warrant, and within the period of six years from the passing of the sentence, the fine or any part thereof remains unpaid (s. 70 of Penal Code), and the Magistrate has, from information gained in any way, reason to think that any moveable property belonging to the offender is within his jurisdiction, he should issue a fresh warrant for the attachment and sale of such property. Such warrant should be made returnable within a certain time.—C. C. No. 8, of 22nd June 1864.

Note the words "may, *in its discretion*, issue a warrant." Where imprisonment has been suffered in default of payment of fine, the Court may, in some cases, consider it harsh or unnecessary to levy the fine. See also s. 70, Penal Code, "*may* be levied."

Probably a Magistrate is not bound to decide claims to property seized made by relatives of the offender or other third parties, as *bonâ fide* claimants can sue the purchasers in the Civil Court. See 7 W. R., Cr., 35. But where such claims do not appear to be fraudulent or collusive, Magistrates will do well to look into them, and to release the

property in cases where it clearly does not belong to the offender. Where there are grounds for suspecting the commission of an offence under s. 206, P. C., the property should be retained and sold.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by the successor in office.

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

The law does not state who is to inflict the whipping. Under 10 and 11 Vict., c. 82, a constable is bound to obey an order of the Justices to whip boys out of prison.

Execution of sentence of whipping, in addition to imprisonment.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by

the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

Mode of inflicting punishment.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

In no case shall such punishment exceed thirty stripes.

In the case of an adult, the whipping is to be inflicted on the breech with a ratan not exceeding half an inch in diameter. Beng. Cir. 1329, of 29th February 1864.

Not to be executed by instalments.

Exemptions.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

The whipping of females in England was not wholly abolished till 1820. There is, however, one offence for which an offender may be whipped, whether male or female, and that is, the pointing fire-arms or throwing offensive materials at the sovereign —5 and 6 Vict., c. 38, s. 2. In China, female offenders can only be sent to prison in capital cases, or cases of adultery. In all other cases, they shall, if married, remain in the charge and custody of their husbands, and, if single, in that of their relations, or next neighbours, who shall, upon every such occasion, be held responsible for their appearance at the Tribunal of Justice, when required. There are many provisions in the Chinese Penal Code, a Code framed by orientals for orientals, which harmonise with the ideas and requirements of Hindu society. Probably most Hindus, high caste or low caste, would approve of the above provisions regarding the punishment of women.

394. The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentences on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered im-

prisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Provisions supplemental to sections 35, 396, and 397.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the

award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

As amended by Act X, 1886, s. 10.

Confinement of youthful offenders in reformatories.

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Coun-

cil or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

As amended by Act X of 1886, s. 11.

Power to commute punishment.

402. The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

See s. 55, Penal Code.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other

offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a.*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*.) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with, and tried for, dacoity on the same facts.

"Same offence" means not the same *eo nomine*, but the same criminal act or omission. See English, American, and French law, and decided cases under this section in my "Comparative Criminal Jurisprudence."

A case of house-breaking in order to commit theft was allowed to be compounded, and the case was 'dismissed.' *Held*, that the 'dismissal' was equivalent to a discharge only, as the case was not a summons-case, and the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient. Section 188 (now 345) could not apply, as that section refers only to cases which may lawfully be compounded.—I. L. R., 1 Bom., 64.

Where an accused was charged with criminal trespass with respect to the fruit of a certain garden and was acquitted,—*Held*, that he could not again be tried for theft of the fruit, as that charge might have been made against him in the former case. There were no fresh facts.—25 W. R., Cr., 63. See also I. L. R., 8 Mad., 296. But a person acquitted of stealing property may subsequently be tried for, and convicted of, dishonestly receiving such property.—25 W. R., Cr., 47.

A dismissal by one Court of a charge of riot against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences.—6 W. R., Cr., 51.

A person who is tried and acquitted of the offence of assault under s. 352, Penal Code, cannot again, upon the same complaint, be tried for 'causing hurt.'—7 B. L. R., App., 25. Where a prisoner was convicted and sentenced under s. 50 of Act XVII of 1850, upon the charge of fraudulently secreting a post-letter, and on appeal such conviction and sentence were confirmed, *held*, that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction.—1 Mad. H. C. Rep., 183. The question in such cases is—Is the offence one and single? "*unum et idem deliotum.*" If so, "*nemo bis puniri &c.*" applies. SCOTLAND, C. J., remarked: "As (1) both acts *formed substantially* a part of one and the same criminal transaction, and (2) the evidence with reference to such acts was *as necessary and material on the first* charge as on the second, the prisoner must be considered to have been tried and in peril in respect of the whole transaction as one offence. The evidence as to his making away with the letter was properly a part of the case in support of the first charge and the strongest proof of it. There was, in fact, *no part of the evidence* upon which the second conviction took place *which was not properly evidence on the first charge.*"

Where an offence is tried by a Court without jurisdiction, the proceedings are void under s. 530 (*infra*), and the offender, if acquitted, is liable to be retried. In such a case the offender may at once be tried by a competent Court, and it is not necessary that any reference should be made to the High Court.—I. L. R., 8 Bom., 307.

The previous conviction or acquittal must have been by a competent Court.—I. L. R., 8 Mad., 48.

See I. L. R., 3 All., 129, noted under s. 258, *supra*.

PART VII.

OF APPEAL, REFERENCE, AND REVISION.

CHAPTER XXXI.

OF APPEALS.

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

An interlocutory order in a criminal matter is not final, but may be reviewed or reconsidered, or a similar application may be entertained as often as the Court in its discretion may think proper. The Chief Justice, having once appointed a Bench under s. 14 of the Charter Act (24 and 25 Vict., cap. 104), to hear any particular case, has no power to interfere when the case has been disposed of by that Bench.—I. L. R., 8 Calc., 63.

No appeal lies from an order passed under s. 22 of the Cattle Trespass Act (I of 1871), awarding compensation for illegal seizure of cattle. The person against whom the order is made is not "a person convicted on a trial" (see s. 407).—I. L. R., 10 Bom., 230. Neither is there an appeal against an order under s. 250 giving compensation.

Sentences passed in criminal cases in the Sonthal Pergunnahs are final.—s. 4 (cl. 1) of Act XXXVI of 1855. See s. 1, *supra*; I. L. R., 12 Calc., 536.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for good behaviour.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

No appeal lies to the High Court from an order passed by a District Magistrate requiring security for good behaviour.—I. L. R., 9 Calc., 878. See ss. 124, 125, 515.

Appeal from sentence of Magistrate of the second or third class.

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Subdivisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

But see s. 486, *infra*.

See last paragraph of s. 35, *supra*. But if a Magistrate holds separate trials, and gives a non-appealable sentence in each case, the Sessions Judge cannot treat the whole matter together so as to give a right of appeal—I. L. R., 8 Calc., 481.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground

that the person convicted is ordered to find security to keep the peace.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

The jury acquitted the prisoner, but found him guilty of culpable homicide not amounting to murder. *Held*, that, as there was an acquittal on the charge of murder, the Local Government had a right of appeal. The Secretary to Government wrote to the Legal Remembrancer, directing him to appeal, and the appeal was consequently instituted by one of the Government Pleaders. *Held*, that the appeal was duly made.—I. L. R., 2 Calc., 273. An appeal by the Local Government under this section is within time if presented within six months from the date of acquittal. The sixty days' rule does not apply.—I. L. R., 2 Calc., 436.

No appeal lies under this section where the case has been tried by a jury and the questions involved are purely questions of fact. For such an appeal to lie, it must be supported upon a ground which is covered by s. 418.—I. L. R., 10 Calc., 1029.

See I. L. R., 4 All., 148, where the presiding Judge makes some remarks about appeals under this section. The remarks may be sensible, but they go beyond the law. An appeal under this section should be treated as any other appeal.

Section 417 is not exclusive. See notes in my "Comparative Criminal Jurisprudence." In other Presidencies, retrials are frequently ordered after original or appellate orders of acquittal. See case reported at I. L. R., 9 Mad., 9, in which an appellate judgment of acquittal was upset on revision by the High Court, and the first class Magistrate was directed to restore the appeal to his file and pass fresh orders upon it. See notes under s. 439, *infra*.

When a Divisional Commissioner requires the records of a criminal trial in order to satisfy himself whether Government should be moved to direct an appeal against an original or appellate judgment of acquittal, the Sessions Judge should comply with the requisition.—C. O. No. 1, of 12th Jan. 1877.

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

The prisoner is in a better situation if his case be referred under s. 307 than when he prefers an appeal himself under this section. If the conviction was in a trial by jury, s. 418 allows an appeal on a matter of law only. But there is a similar peculiarity in the Code. If a jury find a prisoner guilty of murder, and sentence of death follows, the High Court has power by s. 376 to acquit the prisoner on the facts, although if he had been sentenced to transportation for life instead of to death, and had simply himself appealed, the Court would not have been able to disturb the verdict of the jury on the facts.—*Per* PHEAR, J., in 11 B. L. R., 14.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

It was held under the former Code, that a petition of appeal may be presented by any person authorized by the appellant to present it.—I. L. R., 1 Mad., 304. It appears that now only the appellant himself or his pleader may do so. But see s. 4 (*n*), *supra*.

A petition of appeal presented for admission may be withdrawn (5 C. L. R., 372); but probably cannot be withdrawn after the Appellate Court has perused the evidence.—6 C. L. R., 427.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

See definition of 'pleader,' s. 4 (*n*), *supra*.

An order of rejection under this section is a final order falling within the scope of s. 430, and is not subject to revision (I. L. R., 4 Bom., 101); but the Madras High Court have held otherwise.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Only the High Court can now enhance, s. 439, *infra*. See ss. 529—537. The Appellate Court should consider whether, as a matter of fact, the appellants committed the offence of which they have been convicted.—20 W. R., Cr., 13. An Appellate Court cannot set aside the sentences of those who have not appealed. Its proper course is to refer to the High Court or to Government.

See notes under this section and under s. 418 in my "Comparative Criminal Jurisprudence." In England, the Court above will not interfere with decisions on matters of fact, where it sees any evidence upon which the justices could have proceeded. So rigid a rule could not be adopted in India; but there can be no doubt that findings of fact are frequently upset by Appellate Courts on insufficient grounds. Article 603 of the New York Code of Criminal Procedure enacts, that the Appellate Court "*must* give judgment *without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties.*"

"It is a mistaken view of the law to suppose that prisoners in appeal ought to have the benefit of any doubt with reference to any portion of the evidence. The doubt shown must be of the strongest kind before the Appellate Court should be justified in interfering."—18 W. R., Cr., 15.

When a Sessions Judge, on appeal, annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a retrial at the time, he is not precluded, by virtue of s. 369, from passing such an order subsequently. Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court and the conviction quashed on appeal, a competent Court may retry the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed. The order annulling the conviction in such a case does not amount to an acquittal.—I. L. R., 3 Mad., 48.

Clause (*b*). The Appellate Court, in an appeal from a conviction, can only order an accused person to be committed for trial, when it considers that the accused is triable exclusively by the Court of Session.—I. L. R., 8 All., 14. When commitment is ordered, the accused may be committed on the record as it stands.—I. L. R., 2 All., 910.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

All Appellate Courts are to certify their decisions to the Court or Magistrate from whose decision the appeal has been preferred, and it will be the duty of such Court or Magistrate either to issue such warrant as may be necessary in consequence of the decision of the Appellate Court, or to inform the appellant *in writing*, through the officer in charge of the jail, of the result of his appeal.—C. O. No. 6, of 2nd July 1869. The Appellate Court should at once communicate the decision arrived at to the Court which has to carry out its order. A copy of the formal order passed and of the judgment on appeal should, however, always be attached by the Appellate Court to the record of the original Court, and returned to it therewith.—C. O. No. 4, of 30th March 1878.

Suspension of sentence pending appeal.

Release of appellant on bail.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subor-

dinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

The accused having been acquitted by the Court of Session, an appeal was preferred to the High Court. The Magistrate had the accused arrested, in order that they might be detained in custody pending the appeal. *Held*, that the High Court had no power, as a Court of Revision, to interfere with the order. The Magistrate's order was not a judicial proceeding within the meaning of s. 4.—I. L. R., 1 All., 1.

Appellate Court may take further evidence or direct it to be taken.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall, for the purposes of Chapter XXV, be deemed to be an inquiry.

"Certifying such evidence" may include an expression of opinion on the part of the officer making the inquiry; but will not justify him in amending his finding or coming to a new finding.—3 B. L. R., Cr., 62.

The Appellate Court is bound, in forming its conclusion as to the credibility of the witnesses, to attach great weight to the opinion which the lower Court who heard them has expressed upon the matter.—13 W. R., Cr., 13.

A case of assault, tried by the Assistant Magistrate of Purneah, was appealed to the Sessions Judge, who ordered an inquiry, and found that the assault had been committed in Maldah, and thereupon released the accused. *Held*, that, under s. 531, Criminal Procedure Code, the Judge had no jurisdiction to make such an order, the accused not having been prejudiced in his defence; and further, that he ought not to have ordered the inquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused.—23 W. R., Cr., 34.

When an Appellate Court feels doubt, it is better that it should act under this section than hastily allow the appeal. There is an English maxim that it is better that ten guilty men should escape than that one innocent man should suffer. This maxim is useful as an emphatic caution against haste in coming to a conclusion adverse to a prisoner. But the maxim itself is, as Stephen shows, merely a result, like some other similar maxims, of the extreme severity of the old English Law.

"This maxim or observation," says Stephen, "is open to two decisive objections. In the first place, it assumes, in opposition to the fact, that modes of procedure likely to convict the guilty are equally likely to convict the innocent, and it thus resembles a suggestion that soldiers should be armed with bad guns, because it is better that they should miss ten enemies than that they should hit one friend. In fact, the rule which acquits a guilty man is likely to convict an innocent one. Just as the gun which misses the object at which it is aimed is likely to hit an object at which it is not aimed. In the second place, it is by no means true that, under all circumstances, it is better that ten guilty men should escape than that one innocent man should suffer. Everything depends on what the guilty men have been doing, and something depends on the way in which the innocent man came to be suspected. I think it probable that the length to which this sentiment has been carried in our Criminal Courts is due, to a considerable extent, to the extreme severity of the old Criminal Law, and even more to the capriciousness of its severity and the element of chance which was introduced into its administration."—Steph. Cr. Law, Vol. i, 438. Formerly, under English Law, many offences (including theft) were punished with death, and this led to acquittals on technical flaws.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

See note under s. 421.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

This section incorporates a ruling of the Bombay High Court (I. L. R., 2 Bom., 564); but the High Court may call for and examine the record with a view to revision.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail, and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Power to call for records of inferior Courts.

435. The High Court or any Court of Session, or District Magistrate, or any Subdivisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Subdivisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

"Inferior Criminal Court." The words used in s. 295 of the Code of 1872 were "any Court subordinate to such Court or Magistrate." From this alteration the Calcutta High Court have inferred (I. L. R., 10 Calc., 268) that the District Magistrate has no jurisdiction under s. 437 in respect of dismissals and discharges by first class Magistrates, as appeals from their orders lie to the Court of Session. Such an interpretation was, to say the least, strained and far-fetched, and it was not the intention of the Legislature to make any change. The word 'subordinate' is used in s. 437. See s. 17, C. P. C., also ss. 406 and 515. Moreover, the words "or otherwise" are contained in s. 437. A Full Bench of the Madras High Court has expressly dissented from this ruling (I. L. R., 8 Mad., 18); and there can be no doubt whatsoever but that this Full Bench ruling gives effect to the clear intention of the Legislature. The Madras Judges have well pointed out the reason for the use of different terms: "The reason for the employment of the term 'inferior' in ss. 435 and 436 was, that, in both those sections, the Court of Session and the District Magistrate are combined, and the Magistrates (other than the District Magistrate), though subordinate to the District Magistrate, are not so generally to the Court of Session. It was necessary, therefore, in ss. 435 and 436, to employ a term applicable to the relations of the Magistracy both to the supervising authority and the appellate tribunal." Sections 435 and 437 are obviously to be read with s. 17. The Bombay High Court agree with the Madras High Court.—I. L. R., 9 Bom., 100. They refer to ss. 350, 435, 406, 407, 514, and 515, which accord with the provision of s. 17. To same effect is I. L. R., 7 All., 853. This unanimity of the other High Courts has induced the Calcutta Court to reconsider their former decision, and they have since given a Full Bench decision in accordance with the law.—I. L. R., 12 Calc., 473.

The taking by the Sessions Judge of a different view of the evidence from that taken by the Magistrate is not ground for a reference.—18 W. R., Cr., 39.

It was ruled, under s. 294 of the former Code, that this section empowers the High Court to consider the legality or propriety of any sentence or order, and not of judgments. Judgments can be reversed for illegality alone. This is manifest from s. 286 (now 404), which limits the hearing of appeals; but if the word 'propriety' allows the High Court to take up every case of revision from a Sessions Judge and decide it on the merits, it would give an appeal which the law nowhere contemplates, *viz.*, a second appeal on the facts from the decision of the Magistrate who originally tried the case. When it appeared to the High Court that it was doubtful whether the evidence was sufficient to support the conviction, the Court refused to interfere, there being no material error in law. A judgment cannot be interfered with (except in cases where the law gives an appeal on the facts), unless it be shown that it is contrary to law.—12 B. L. R., 249. But, as a matter of fact, judgments are sometimes upset on other grounds.

When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.—I. L. R., 4 Calc., 20. A Sessions Judge is bound, before referring a case to the High Court for orders, to call upon the inferior Court for an explanation of the order passed, and should submit such explanation, together with the rest of the record, to the High Court.—I. L. R., 8 Calc., 644.

See notes under this section in my "Comparative Criminal Jurisprudence." In France, only final judgments or orders can be revised by the Court of Cassation. The Court never interferes with pending proceedings or cases.

Orders made under ss. 143 and 144 are not liable to revision by the High Court. The intention of the Legislature is here expressed in more emphatic and unambiguous words than it was in s. 519 of the former Code. *Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.* Judges in England no longer attempt to elude or override the plain words of the law, as they did forty or fifty years ago, owing to the extreme severity of the criminal law, under which there were some 200 capital offences! The writings of some famous jurists and jurisprudents have made it clear that they betray their trust by so doing, and render themselves liable to a prosecution. It is the duty of a Judge to interpret and not make law, *jus dicere, non dare.* Kent in his Commentaries says: "It is the great object of the maxims of interpretation to discover the true intention of the law, and whenever that intention can be indubitably ascertained, and it be not a violation of constitutional right, the Courts are bound to obey it, whatever may be their opinion of its wisdom or policy." *Optima est lex, quæ minimum relinquit arbitrio judicis; optimus judex, qui minimum sibi.* There can be no doubt about the third paragraph of s. 435. Still some Judges went counter to s. 519 of the former Code, *e.g.*, MARKBY, J., and PHEAR, J., even though it had been held by a Full Bench that orders passed under s. 518 were not open to revision under s. 297 (1872).—6 B. L. R., F. B., 74.

Power to order commitment.

436. When on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused

person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

The present law embodies the interpretation of the term 'sessions-case' given in I. L. R., 1 All., 413; 21 W. R., Cr., 42; and 7 C. L. R., 168; 3 *ibid*, 263.

An order by a Judge, under s. 296 (now 436), directing a Magistrate to commit an accused person, who has been discharged at a preliminary inquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a commitment for offences with which the accused was in no way charged before the Magistrate.—10 B. L. R., 285. Under cl. (*b*) he may direct the inferior Court to inquire.

A Court of Session has no power under this section to direct the commitment for trial of persons against whom no evidence has been legally recorded.—24 W. R., Cr., 70.

Under s. 296 of former Code it was held, that a Sessions Judge has power to direct a subordinate Court to inquire into offences in respect of which he considers a commitment to the Sessions Court should be made; but where a person accused of an offence has been discharged under s. 253 by a Magistrate duly empowered to try the offence, a Sessions Judge has no power to order the commitment of the accused without, at least, giving him an opportunity of showing cause against it. Where, however, such a commitment has been made and a trial had thereunder, s. 537, Criminal Procedure Code, is a bar to the reversal of the judgment of the Sessions Court, unless there has been an actual failure of justice caused by his error.—10 C. L. R., 8; I. L. R., 7 Calc, 662.

The provision as to allowing the accused to show cause embodies rulings in 22 W. R., 67; 24 W. R., 70; C. L. R., 193. But if the trial has taken place, and there has been no failure of justice, the High Court will not interfere.—I. L. R., 7 Calc., 662.

"May order him to be committed." In such a case it is not necessary for the Magistrate who has discharged to hear the witnesses over again. He has merely to send for the accused, and formally to commit him on the evidence already taken.—I. L. R., 2 All., 910.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District

Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, *or into the case of any accused person who has been discharged.*

See notes under s. 435.

"Further inquiry" means the taking of additional evidence.—I L. R., 10 Calc., 207, 1027; 12 Calc., 522; 8 Mad., 336. *Held*, by TOTTENHAM and NORRIS, JJ., that the District Judge has no power to direct further inquiry into the case of an accused who has been discharged after full inquiry by a competent Court, and when no further evidence is disclosed.—I. L. R., 10 Calc., 1027. I submit that this ruling is not sound, and will not stand before a Full Bench. The section should be construed in its plain and obvious sense. The ruling *adds* conditions which are not to be found in the Statute, and much harm may be done by it, unless it speedily comes before a Full Bench. The District Judge, in the particular case, might also have proceeded under s 436.

It is not necessary to give any notice to the accused before an order is passed under this section, see s. 440. The instances in which it is necessary to give notice are specified in ss. 436 and 439.—I. L. R., 10 Calc., 268. A Sessions Judge has no power, under s. 437, to direct a particular Magistrate by name to make the further inquiry. He should direct the District Magistrate to make such inquiry "by himself or by any of the Magistrates subordinate to him."—I. L. R., 10 Calc., 207. The Legislature has provided notice in ss. 436 and 439, and by omitting it in s. 437, clearly shews its intention not to require it. *Expressio unius est exclusio alterius.*. It would, as remarked by the Bombay High Court, be making a new law to hold notice necessary under this section. See the provisions of s. 440, which were evidently overlooked by the High Court in I. L. R., 6 All., 367. See I. L. R., 10 Bomb., 131.

Some of the cases quoted by Mr. PRINSEP under s. 253, C. P. C., are no longer applicable under the present Code. It is now clear law that—

(1) Further inquiry may be directed not only when there are fresh witnesses, but when the witnesses already examined have not been fully and properly examined;

(2) When there are fresh witnesses, the Magistrate is not bound to take again the evidence already taken.

See I. L. R., 8 Mad., 336. "I am inclined to think that the words 'further inquiry' in s. 437, though not synonymous with 'fresh inquiry' or 're-trial,' are intended to include those terms. A District Magistrate may order a further inquiry if he thinks that a Subordinate Magistrate has misapprehended the law, or has not rightly appreciated the effect of the evidence or the credit due to the witnesses. In *R.* v. *Papadu* (I. L. R., 7 Mad., 454) it was held, that the effect of an order for 'further inquiry' is to re-open the trial and to permit the Magistrate to convict for *any* offence included in the offence originally inquired into, if he considers it established by the evidence." Any other interpretation would nullify the intention of the Legislature and make s. 437 a dead letter.

"Or into the case of any accused person who has been discharged." This new provision in the present Code clearly empowers the District Magistrate to interfere with the discharge of "any accused person"

whatever by a Subordinate Magistrate, whether the discharge has been under s. 200 or s. 253. As to the meaning of "further inquiry," s. 435 speaks of "the *correctness*, legality, or propriety of any finding, sentence, or order" (s. 295 of the Code of 1872 spoke of the "legality of any sentence or order"). This is large enough to include a finding of fact depending upon an appreciation of the evidence recorded by the lower Court. The section does not say that the District Magistrate can only direct further inquiry when there is a "contention" that "further evidence" is forthcoming, or when "further evidence is disclosed," as held by the Calcutta High Court in one or two cases. We have no power, remark the Bombay Judges, to import any such restriction into the section, when the Legislature has expressly empowered the District Magistrate to make or order further inquiry "*into the case of any accused person who has been discharged*," without subjecting the exercise of that power to any such condition. Taking ss. 435 and 437 together, his power to interfere in cases of improper discharge by inferior Courts, by ordering further inquiry, would seem to be co-extensive with the power of the High Court itself; and if no such condition can be imposed on the exercise of such power by the latter, it is difficult to see how it can be imposed upon such exercise by the former. When cases come before the High Court under s. 439, it may direct "further inquiry," *or* under s 428, direct "additional evidence" to be taken, indicating the possibility of "further inquiry" without "additional evidence." Again ss. 375 and 380 (*d*) clearly show that there may be a "further inquiry" without "additional evidence." Thus the argument that, in s. 437, "further inquiry" implies "additional evidence" altogether fails. Suppose a Subordinate Magistrate has discharged an accused without considering some points bearing on the guilt or innocence of the accused, may not the District Magistrate, if satisfied of the impropriety of the order of discharge, decide those points himself, or direct them to be decided by the Subordinate Magistrate, on the evidence already on the record, and pass a new decision according as he finds them for or against the accused? *There is nothing in the section to prevent his doing so.* Besides, even if we assume that "further inquiry" necessarily implies additional evidence, we ought to bear in mind that additional evidence is frequently as effectually elicited by a further examination of the same witnesses, on the same or additional points, as by an examination of new witnesses. There may be thus a "further inquiry" upon the same evidence, as well as upon additional evidence, whether elicited from the same witnesses or new witnesses.—I. L. R., 10 Bomb., 131. The Judges further remarked on the same case: "If an accused person is discharged by one Magistrate, that order does not amount to an 'acquittal' under s. 403. If, therefore, the complainant prefers another complaint to another Magistrate regarding the same matter, there is nothing to prevent such complaint being inquired into."—20 W. R., Cr., 47; 24 W. R., Cr., 70; I. L. R., 1 Bomb., 64; 4 Bomb. H. C., 3rd December 1884.

Under the former Code, it was held to be illegal and *ultrâ vires*, on the part of a Magistrate, to revive before himself criminal proceedings against an accused, who had already been discharged under s. 215 (now 253), where no further evidence was procurable than that which was before the Court on the first occasion.—I. L. R., 2 Calc., 410; see also I. L. R., 2 Bomb., 534. A case may be now revived, though there be no fresh evidence.

Under the former Code, the Magistrate of a District reinstituted a case, in which the accused had been discharged by a Subordinate Magis-

trate without hearing all the witnesses, and convicted the accused. The High Court refused to interfere, remarking: "Unless we are of opinion that the irregularity, supposing an irregularity to have occurred, has been productive of failure of justice, we ought not to set aside the trial or to reverse the sentence by way of revision."—5 B. L. R., App., 48. Under the present law such action would be quite regular.

A Deputy Magistrate having dismissed a case instituted under s. 380 of the Penal Code, without taking certain evidence which, in his opinion, would have been of little value, the Magistrate of the District, on the application of the complainant, took such evidence, and committed the accused for trial before the Sessions Court. *Held*, on reference to the High Court, that, as the words 'sessions-case' in s. 296 of the Criminal Procedure Code (now s. 436) have reference only to a case triable exclusively by a Court of Session, the Magistrate's action could not be supported under that section, but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress* v. *Donnelly* (I. L. R., 4 Calc., 16). The case of *Empress* v. *Donnelly* is reported in I. L. R., 2 Calc., 40.

Under the former Code it was held, that a Magistrate has no power to remand a criminal case to a Subordinate Magistrate for retrial after the case has been once dismissed; the courses open to him are—(1) to accept a fresh complaint supported by fresh evidence, which was not before the Court when the case was dismissed, or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court under s. 296.—I. L. R., 4 Calc., 647. The District Magistrate can now revive any case in which there has not been an acquittal; and it is probable also that he can order a retrial where there has been an illegal or improper acquittal in summons-cases. See under s. 247.

Report to High Court.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement, that he be released on bail or on his own bond.

A proper discretion should be exercised. The Magistrate and Judge are not *bound* to refer every case in which they may detect an error.—20 W. R., Cr., 40.

Release orders are not to be telegraphed to jails.—C. O. No. 27, of 20th July 1878.

References under s. 296 (now 438) are to be accompanied by the records of the case to which they relate, and are to contain (1) a brief analysis of the case, (2) the order recommended for revision, (3) in what particular portion of that order the Court making the reference considers an error on a point of law to exist, and (4) the grounds upon which, in the opinion of such Court, the order should be reversed.—C. O. No. 18, of 15th July 1863. See also I. L. R., 8 Calc., 644.

High Court's powers of revision.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

The High Court will not exercise its powers of revision when the right of appeal has not been exhausted.—I. L. R., 3 Calc., 573; 2 All., 276.

"Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction." But, so long as a finding of acquittal is not actually converted into one of conviction, there is nothing to prevent the High Court from remedying improper acquittals, in the exercise of their jurisdiction under this section. For instance, they may reverse an acquittal and order a retrial. Indeed, if they could not do this, there would be no remedy against improper acquittals in certain summons-cases, unless the District Magistrate can treat such acquittals as discharges; for it is absurd to expect the Government to appeal in such cases. Section 417 only indicates one mode of appeal against acquittals. That section does not state that improper acquittals cannot be remedied in any other way. I am aware that the Calcutta High Court have once or twice laid it down that it is not their practice to interfere, by way of revision, with an acquittal against which Government may appeal.—7 C L. R., 142. To the same effect is a ruling of the Bombay High Court.—I. L. R., 3 Bomb., 151. See also 12 B. L. R., App., 22. But the Calcutta High Court really appear to have been unaware of their previous practice, as disclosed in the *Bengal Law Reports* and *Weekly Reporter*. Had they been aware of the previous case-law, their

ruling would probably have been different. I have come across at least a dozen cases, in which the Calcutta High Court have restored original orders of conviction, or have reversed acquittals and ordered retrial This has also been the practice of the Madras and Allahabad High Courts. See 6 Mad. H. C., App., 48; also 3 Mad H. C., App., 70 See also 5 W. R., Cr., 45; but *contra*, I. L. R., 8 Bomb., 197, in which case it was merely ruled that, in cases in which the law allows no appeal, the High Court, as a Court of revision, will not, *except on very exceptional grounds*, exercise the powers of an Appellate Court. Of course, the grounds must be exceptional, but it appears to me undoubted that the High Court, as a Court of revision, has as much *power* to reverse an improper acquittal as it has to reverse an improper conviction. Take, for instance, the case reported at 1 B L R., 21. In this case the Joint Magistrate convicted the prisoner of criminal breach of trust, the Judge on appeal acquitted him, and the High Court *restored the original order of conviction!* Many cases may be found in the Reports like this, which show that the Judges who decided the case reported at 7 C. L. R., 142, had but a very imperfect acquaintance with Indian case-law. Again, it has been distinctly laid down by the Allahabad High Court (I. L. R., 1 All., 139), that the High Court is not precluded by a judgment of acquittal from exercising its powers of revision under s. 297 (now 439), though TURNER and SPANKIE, JJ., were of opinion that such powers can only be exercised where the judgment of acquittal has proceeded on an *error of law*, and not where it has proceeded on an error of fact.

In a very recent case the High Court set aside an improper and irregular order of acquittal, and directed a new trial.—I. L. R., 12 Calc., 558. See also I. L. R., 9 Mad., 9.

"May enhance the sentence." Where the subordinate Court has awarded fine only, the Court may enhance by awarding imprisonment as well. Punishment does not mean here the sort of evil or inconvenience inflicted, but the "dose of punishment" (*Bentham*). That dose is enhanced or heightened equally, whether another pain legally imposable is added, or the one already imposed is increased in degree—I. L. R., 1 Mad., 54; 6 All., 622. That the nature of the sentence may be altered is clear also from the words "may alter the nature of the sentence, but not so as to enhance the same," in s. 423 (*b*).

The questions which the High Court has to determine under this section are questions of law or procedure which affect the decision, and not questions of fact depending upon conflicting evidence which has been considered by the lower Court, and upon which such Court has given its opinion adversely to the accused person.—20 W. R., Cr., 40.

In revisional proceedings, the High Court is bound to see if there has been any failure of justice with reference to ss. 529, 531, 537, &c.—See 21 W. R., Cr., 88.

In the course of a serious riot, one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision, *held*, under s. 297 of former Code—

1*st*, that, under this section, the High Court may exercise its powers of revision upon information in whatever way received;

2*nd*, that it was not intended by the Legislature that the powers given by the first clause should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses,

which are merely intended to show the particular course which may be taken in those particular instances of error;

3rd, that it is not a ground for revision by the High Court that all the evidence for the prosecution, which might have been brought before the Sessions Judge, has not been brought before him;

4th, that the words "material error" in that section cannot be held to include error in the appreciation of evidence;

5th, that the High Court cannot set aside findings of fact except in case of an appeal from a conviction.—I. L. R., 2 Mad., 38.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

An order "made to the prejudice of the accused" (s. 439, para. 2) clearly means an order by which his position is rendered worse, as an order to commit him for trial, or enhancing the sentence passed upon him. An order merely refusing to interfere cannot be called an order "to his prejudice."

Statement by Presidency Magistrate of grounds of his decision, to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

The provisions of this section should be extended to all Magistrates. Indeed this is partially done by the ruling in I. L. R, 8 Calc., 644, which directs that a Sessions Judge is bound, before referring a case to the High Court, to call upon the inferior Court for an explanation of the order passed, and should submit such explanation, together with the rest of the record, to the High Court. When an application for revision is made direct to the High Court, the latter should allow the Magistrate to set forth the grounds of his decision or order and any facts which he thinks material to the issue The Court expressed their opinion in one case that a Magistrate should not shew cause by a letter addressed to the Registrar; but such a course is convenient, and having regard to the enormous expansion of the High Court revisional jurisdiction, the Government Advocates cannot possibly appear in every case. In England, a Justice, when his decision is called in question in a superior Court, may file an affidavit shewing grounds of decision and any facts which he may consider to have a material bearing on the question at issue, without payment of any fee, and may forward it by

post. *The Court is bound to take into consideration all matters contained in such affidavit, notwithstanding non-appearance of counsel in support*—35 and 36 Vic., c. 26, ss. 2, 3.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrates who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a *District Magistrate or* Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

As amended by Act III of 1884, s. 3. But any Magistrate may try a European British subject for an offence under s. 19, Act IX of 1874 (Vagrancy Act). See also s. 480, *infra*, relating to contempts; and s. 445.

A European British subject in the mofussil was convicted by a Magistrate under the provisions of this chapter. He appealed to the High Court, on the ground, *inter alia*, that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor-General in Council had not the power under 24 and 25 Vic., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872, under which the prisoner had been tried, were *ultrâ vires* and illegal. *Held*, that the jurisdiction of the High Court, as given by the Letters Patent, is subject to the Legislative powers of the Governor-General in Council, and therefore the Magistrate had jurisdiction to try the case.—14 B. L. R., 106.

Sessions Judge to be an European British subject.

444. No Judge presiding in a Court of Session *except the Sessions Judge* shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

As amended by Act III of 1884, s. 4.

Cognizance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a *District Magistrate or* Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both; *and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.*

As amended by Act III of 1884, s. 5.

When commitment is to be to Court of Session and when to High Court.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magis-

trate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court,

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences which may be passed by Court of Session.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

450. **Repealed by s. 6, Act III of 1884.**

Jury or assessors before High Court or Court of Session.

451. (1) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

(2) When any such trial before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans.

As amended by s. 7, Act III of 1884.

Right of European British subject to claim jury before District Magistrate.

451*A*. (1) In trials of European British subjects before a District Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

(2) If a claim is made under sub-section (1) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section 5 or sub-section (6), in so far as they are

made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

Transfer to another Court in certain cases.

451*B*. (1) If an accused person claims to be tried by jury under section 451*A*, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451*A*, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451*A*.

Sections 451A and 451B are added by s. 8, Act III of 1884.

Trial of European British subject and native jointly accused.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

When native may claim separate trial.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried

separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

Procedure on claim of person to be dealt with as European British subject.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Failure to plead status a waiver.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British

subject, the Magistrate shall ask such person whether he is such a subject or not.

Section 443 must be strictly construed with s. 454. Before a European British subject can be considered to have waived the privilege conferred upon him by s. 443, it must appear that his rights under s. 443 have been distinctly made known to him, and that he has been enabled to exercise his choice and judgment whether he would or would not claim such rights.—6 C. L. R., 463. But see s. 534, *infra*.

Trial under this chapter of person not an European British subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

This special provision on behalf of European British subjects shows that it was the intention of the Legislature that the High Court should not interfere in cases of alleged unlawful detention of natives. As to powers of Magistrates, see ss. 100, 551. Moreover, the direction in the nature of a *habeas corpus*, which the High Court can issue under s. 491, can only be issued within the limits of its ordinary original civil jurisdiction. See I. L. R., 1 All., 1.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

Territories throughout which High Court may issue such order.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts conferring jurisdiction on Magistrates or Court of Session.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate *or any Judge presiding in a Court of Session* not being a Justice of the Peace.

As amended by Act III of 1884, s. 9.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans.

461. Whenever an European or American is charged before the Court of Sessions jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Jury when European or American charged jointly with one of another race.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted

Summoning and empanelling jurors under section 451 or 460.

under the provisions of section 451 or section 460, *or before the Court of a District Magistrate or Sessions Judge proceeding under section 451A or 451B*, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

As amended by Act III of 1884, s. 10.

Conduct of criminal proceedings against European British subjects, &c.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

Procedure in case of accused being lunatic.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness,

and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

See provisions of Act XXXVI, 1858, relating to lunatics not accused of any crime.

"Or such other medical officer as the Local Government directs." The Local Government has issued no direction under this section.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

"When the defendant pleads any plea other than not guilty, and an issue of fact is joined thereon, the truth of the plea must be tried by a jury impannelled for that purpose. It seems, but is not certain, that in such cases no peremptory challenges are allowed."—Stephen's Digest; C. P. C., 284.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

The authority of the Criminal Courts over an accused, declared under this section to be of unsound mind, ceases after transmission of the accused to the place of safe-custody appointed by the Local Government, and such authority can only be revived under the circumstances mentioned in s. 473. If any relative wishes to have the lunatic made over to his care, the Magistrate should refer to the Government.—I. L. R., 2 Calc., 356.

The Court before whom the accused is brought is to report direct to Government.—Beng. Circ. 84, of Oct. 28th, 1870.

Resumption of inquiry or trial.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was

committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

The test to determine whether a person who has committed an act which is charged against him as an offence was of sound mind at the time of its commission, is whether he knew that he was doing wrong.—24 W. R., Cr., 5.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

See s. 84, Penal Code; and 104, Evidence Act.

The finding should state specifically whether the accused committed the act charged or not. To find the prisoner *guilty* of the offence charged, and then to acquit him on the ground of insanity, is to include two opposite verdicts in one and the same finding, a contradiction arising from want of attention to the words of the law.—C. O. No. 22, of 10th Dec. 1864. Magistrates and Sessions Judges should report such cases direct to Government.—Beng. Circ. 84, of 18th Oct. 1870.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in the lunatic asylum, jail or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector-General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the

Visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such Visitors as aforesaid; and such Inspector-General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is confined under the provisions of section 466, and such Inspector-General or Visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or Visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or Visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the

satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Power of Governor-General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India.

Power of Local Government to relieve Inspector General of certain functions.

475B. The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473 or section 474.

The above two sections (475A and 475B) are added by s. 12, Act X of 1886. Superintendents of Jails have been generally empowered under this section.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send

the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

When a Court proceeds under this section, its proceedings are apparently not revocable by the Court to which it is subordinate. Procedure under this section is not a mere sanction, as under s. 195, *supra*

It is not necessary that the preliminary inquiry should be conducted in the presence of the accused.—9 W. R., Cr., 3. See s. 478.

"After making such preliminary inquiry as may be necessary" If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under s. 476. Criminal Procedure Code, without any further inquiry than that which he has already held in his Court.—I. L. R., 6 Calc., 308. It is not necessary that there should always be a preliminary inquiry. For instance, where a Munsif thinks parties to a suit have given false evidence, he can, without making any separate inquiry, send them at once to a Magistrate—I. L. R., 5 All., 62. There may be many cases in which no preliminary inquiry can possibly be necessary.

In a certain case it was held, that a Judge has no power to send a case to a Magistrate, except when, after having made such preliminary inquiry as may be necessary, he is of opinion that there is sufficient ground (*i. e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial inquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate is bound to inquire. *Held*, that the order of the Judge was too vague and general in its character. A Judge cannot issue a general roving commission to a Magistrate to inquire generally into the truth or falsehood of depositions or of averments in a plaint.—I. L. R., 1 Calc., 450. In this case the ruling in *Kali Prosunno Bagchee* (23 W. R., Cr., 39) was followed. But, as was pointed out in I. L. R., 6 Calc., 308, it is a mistake to suppose that proceedings cannot be instituted under this section against any of the parties or witnesses concerned in a case without first holding an enquiry and calling on those parties to show cause why such proceedings should not be taken.

Power of Court of Session as to such offences committed before itself.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a

judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

A Sessions Court cannot commit a case to itself unless the offence is committed before it. See I. L. R., 4 Calc., 570. But now the words "or brought under its notice in the course of a judicial proceeding" have been substituted for "or under its own cognizance" in s. 472 of the former Code. See, however, I. L. R., 6 All., 103.

It seems doubtful whether the ruling in 4 B. L. R., A. Cr., 9 (a decision on the corresponding section of Act XXV of 1861). would any longer be applicable. This ruling was that a Sessions Court could not act under this section in respect of contradictory statements, one of which had been made before the Magistrate.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

"Or such Civil or Revenue Court thinks that it ought to be tried, &c." Under s. 474 of the former Code it was necessary that the offence should be one exclusively triable by the Court of Session.

Any Court, whether having the power to commit or not, may proceed under s. 476. If a Civil or Revenue Court is not disposed to exercise the power to commit under this section, it may send the case to a Magistrate having power to try or commit for trial for the offence charged. A Magistrate can only commit to the Court of Session, if he is empowered to commit. See 2nd para. of s. 487, *infra*. See I. L. R., 4 Bomb., 287. When a commitment is made, there must be a separate and regular inquiry.—I. L. R., 4 Mad., 227.

Procedure of Civil Court in such cases.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

A was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under s. 228, and fined. *Held*, that the Sub-Registrar should have adopted the procedure of ss. 480, 482. Under the Registration Act, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228, Penal Code. As he is legally authorized to take evidence, he is a "Court" as defined by the Evidence Act, s. 3.—13 B. L. R., App., 40. See s. 488 *infra*, under which the Local Government has not given any direction.

See notes under this section in my "Comparative Criminal Jurisprudence." The French Code d'Instruction Criminelle contains some very stringent provisions relating to contempts.

Each Court is presumed to know its own law and to put the right interpretation on the character of the act done, so far as it is contemptuous, for, if the contempt is by a gesture, none but the Court can judge of it.—*Re Pater*, 5 B. and S, 299. Subordinate Courts in India cannot take notice of external contempts, that is, contempts committed out of Court, except by instituting, or procuring the institution of prosecutions under specific sections of the Penal Code. Mr. PRINSEP has a note that a persistence in putting vexatious or irrelevant questions after warning may amount to a contempt.—*Azemalla*, 2 Panj. Rec., 80.

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 480.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or

requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

See s. 132, Evidence Act. The provisions of this section are taken from 11 and 12 Vic., c. 42, s. 16.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other

cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court, from himself committing any case to such Court or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

The prohibition in this section is a personal prohibition.—I. L. R., 1 Mad., 305. It does not apply to a successor in office.

A Magistrate who has been authorized by the Collector of a District under the Stamp Act to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes.—I. L. R., 3 Calc., 622.

When a charge has been laid before the Police, the Magistrate having jurisdiction may himself try the complainant for a false charge under s. 211. As the false charge is not preferred before the Magistrate, the offence of making it is not a contempt of the Magistrate's authority. No sanction is necessary in such a case, as the offence is not committed before or against a Criminal Court.—I. L. R., 3 All., 322.

A prisoner, who had made contradictory statements on oath before a Magistrate and a Court of Sessions respectively, was convicted by the same Court of Session on a charge in the alternative of giving false evidence either before the Magistrate or the Court of Session. *Held*, that the Court was precluded by s. 487 from trying the charge.—I. L. R., 3 Mad., 254. But see note under s. 477.

The proceedings of a Magistrate who tries prisoners charged with having committed offences under the Registration Act are not illegal and without jurisdiction, or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his official capacity of Sub-Registrar.—17 W. R., Cr., 39. This is a doubtful ruling.

The Court, civil or criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in s. 195, may not, except as provided in s. 477, try the accused person itself for the offence charged.—I. L. R., 1 All., 129. The law on this point used to be very uncertain. Several conflicting rulings came before an Allahabad

Full Bench, and it was held (STUART, C. J., dissenting), that an offence under s. 193, Penal Code, being an offence in contempt of Court within the meaning of s. 473, cannot, under that section, be tried by the Magistrate before whom such offence is committed. See 10 Bom. H. C. Rep., 73; I. L. R., 1 Bomb., 311; 7 Mad. H C. Rep. Rulings 17 and 18, I. L. R, 1 Bomb, 339. The words of the new law make the matter clear, "when such offence is committed before himself or in contempt of his authority, &c."

A Court of Session can try an offence committed before itself as District Judge in a civil appeal.—I. L R., 6 Bomb., 479.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, or a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs

Such allowance shall be payable from the date of the order

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

See notes and rulings, &c., under this section in my "Comparative Criminal Jurisprudence."—In England it has been held that a man is not bound to maintain a bastard child of his wife born before his marriage. *Quære.*—Can a maintenance case in India be settled by the payment of a lump sum to the mother? See English cases.

"Any person." Apparently this will include the mother. In England the mother is bound by statute to maintain her illegitimate child, with a power to enforce a contribution against the putative father. See English, Scotch, and American law in above work.

A sentence of imprisonment under s. 488 is absolute, and the defaulter is not entitled to release upon payment of the arrears due.—I. L. R., 8 Mad., 70. See form 40 in Schedule V, and contrast with form 30, also with ss. 123, 124, 480, 485 of the Code.

A married couple are living at Burdwan. The husband abandons his wife and goes away to Calcutta. It is not necessary that a case for maintenance should be instituted in Calcutta. The woman may institute it in Burdwan. See 5 N.-W. P. Rep., 237. The ruling of the Bombay High Court (I. L. R., 9 Bom., 40) is clearly wrong. See the wording of s. 490, which relates to the enforcement of the order. WEST, J., appears to have been misled by the provisions of some English statutes, and he gratuitously supposes that the Indian Legislature must have been familiar with the various statutes and cases raked up by him.

Held by the Madras High Court, that separate maintenance cannot be ordered merely because the husband has married a second wife.—1 Mad., H. C. R., 375, and I. L. R., 7 Mad., 187. I am inclined to think, speaking of Bengal, that, when the general opinion of a caste holds it reprehensible for a man to marry a second wife in the absence of sufficient cause (*e. g.*, the barrenness or bearing daughters only or unchastity of the first wife), an order for separate maintenance may be justifiable. The grounds specified in the latter portion of the proviso do not appear to be exhaustive, or to exclude other grounds.

A Christian, who has reverted to Hinduism and married a second wife, is bound to maintain his first wife.—3 Mad. H. C., App., 3.

Under the law of the Sheeah Sect of Mahomedans, a *mutta* wife is not entitled to maintenance, but such a provision of the law does not

interfere with the statutory right to maintenance given by the Code of Criminal Procedure. The *mutta* form of marriage does not admit of repudiation under the law of the Sheeah Sect of Mahomedans. *Quære.*—Whether the form of divorce called *Zihar* may be exercised in the *mutta* form of marriage?—I. L. R., 8 Calc., 736.

"Offer to maintain." A Hindu, having two wives, offered to maintain his first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately, coupled with a refusal to live with her as husband and wife. In these circumstances the Deputy Magistrate considered that the complainant was justified in refusing to live with him, and gave her an order for separate maintenance. The Sessions Judge thought the order was illegal, as there was no evidence of adultery or habitual cruelty on the part of the husband. But the High Court refused to interfere on the ground that there had been no sufficient offer to maintain. They said: "The wife must be invited to live with the husband as husband and wife do, and the offer made must be an offer to maintain her as part of his joint family."—I. L. R., 6 Mad., 371.

An agreement entered into before marriage between Mahomedans competent to contract, under which the woman consents to marry on condition that under certain specified contingencies, all of a reasonable nature, her husband should permit her to divorce herself, is valid.—10 C. L. R., 291.

In making an order for maintenance, the Magistrate has no power to take security for possible default.—24 W. R., Cr., 72.

A Mahomedan who divorces his wife, after an order for maintenance has been passed against him, is bound to pay maintenance until such date as he gets the order legally altered.—10 B. L. R., App., 33. An order for maintenance becomes inoperative when a Mahomedan lawfully divorces his wife, but it does not become so till the period of "iddut" has passed.—I. L. R., 5 All., 226; 8 Calc., 736; 8 Bom. H. C., 95. All the Magistrate has to determine is whether the woman claiming maintenance is still the wife of the person against whom she advances her claim. When a question of divorce arises, a Magistrate must determine on such evidence as may be before him, whether there has or has not been a legally valid divorce.—4 C. L. R., 21. A woman can only get maintenance on proof of the existence of the conjugal relation. The fifth paragraph of this section, which is so worded as to apply either before or after an order for maintenance is made, shows that conduct inconsistent with her duties as wife will take away her right to receive maintenance, even while the conjugal relation remains undissolved.—I. L. R., 5 Calc., 558.

The mother of an illegitimate child has a *primâ facie* right to its custody, even though she may be leading an immoral life.—*R.* v. *Nash*, *per* Court of Appeal in England, consisting of JESSEL, M. R., LINDLEY, L. J., and BOWEN, L. J. A Magistrate has no power to enter into any question as to the lawful guardianship of a child. There is nothing in the Code which would warrant a Magistrate in ordering a mother to surrender her illegitimate child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered.—I. L. R., 4 Calc., 374.

The Civil Court has no power to set aside maintenance orders issued by a Magistrate, nor is a wife, because she has under this section received support, debarred from bringing a civil action for maintenance.—6 W. R., Civ., 57; 20 W. R., Cr., 58.

When a duly empowered Magistrate has decided a matter under this section by dismissing the application after hearing the evidence offered, the District Magistrate is not competent to entertain the complaint *de novo*.—1 C. L. R., 89. Apparently he would have to refer the matter to the High Court under s. 438.

Maintenance-applications are treated as summons-cases, and perhaps the District Magistrate would now have power to order further inquiry under s. 437, *supra*.

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Where proof is given that the relationship of husband and wife has ceased to exist, a Magistrate may stay an order made under s. 488. No distinction can be raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Mahomedan law. A Magistrate is competent to try all questions raised before him which affect the right of a woman to receive maintenance.—I. L. R., 5 Calc., 558. A Mussulman, against whom a decree for maintenance had been passed, was called upon to show cause why he should not pay arrears due. He appeared and divorced his wife (the petitioner) in the presence of the Court *Held* that, even if such divorce made such an alteration in the circumstances as to justify the Court, on the application of the husband (the defendant), in altering the order for maintenance, yet the defendant would not be relieved from obeying the order during the time which had elapsed up to the date when and until that change of circumstances had occurred.—19 W. R., Cr., 73.

Though a Magistrate may alter the rate, he cannot make an order for maintenance at a progressively increasing rate.—I. L. R., 12 Calc., 535; 2 All. H. C., 454.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

See s. 548. The copy should be on plain paper.

"Such order shall be enforceable, &c." The word "enforced" is not used. The fact that the father is outside the jurisdiction of the Magistrate who made the order does not prevent such Magistrate from enforcing the order.—I. L. R., 4 Mad., 230.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus.*

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the Acts of the Governor-General in Council, No. XXXIV of 1850, or No. III of 1858.

Mr. Stephen said regarding s. 82 of the former Code: "An order equivalent to a writ of *habeas corpus ad subjiciendum* may now be issued in respect of European British subjects throughout the whole of India. The writ of *habeas corpus* itself will continue to be issued, as at present, in the Presidency-towns, but nowhere else." See s. 456, *supra.*

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Stephen, speaking of the duties of a Public Prosecutor, says: "On the other hand, there are many obligations which affect both the counsel for the Crown and the counsel for the prisoner equally: neither is at liberty to attempt to browbeat, or terrify, or confuse a witness.

"Though they may expose any real confusion which exists in his mind, or test by the strictest cross-examination the honesty of his statements, neither is at liberty wilfully to misunderstand a witness, or to misstate in his address to the jury the effect of what he has said, either by distortion or suppression.

"The neglect or observation of these and other rules of the same kind practically establishes a wide distinction, and one which, to a practised eye, is easily recognized between those, who exercise a noble profession and those who disgrace it. The distinction is all the more real, because no system of rules can fully embody it. It must be a matter of sentiment and good feeling. The form of English Criminal Procedure places a very wide discretion in the hands of the counsel, and it depends entirely in the way in which they use it, whether their functions are a public duty or a public nuisance."

See s. 4 (*m*), *supra*.

Public Prosecutor may plead in all Courts in cases under his charge.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial

or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Pleaders, privately instructed, to be under his direction.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

Effect of withdrawal from prosecution.

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

495. Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

The first para. is substituted, and the last added, by sec. 13. Act X of 1886. Officers of police not below the rank of Sub-Inspector have now been authorized to conduct prosecutions.

It should be noted that the Magistrate may appoint any person he pleases to conduct the prosecution. This is a most useful power, and should be fully utilized where Magistrates either have doubts as to the truth of important cases, or where the private prosecutor is poor and the defence is well represented. The Magistrate may appoint a Subordinate Magistrate (with the consent of the District Magistrate), the District or Assistant Superintendent of Police, the Civil Surgeon, or any other official, pleader, or mukhtar, in whom he has confidence The power to appoint includes of course the power to allow expenses. In districts where mukhtars are either addicted to getting up cases or to magnifying petty occurrences, Magistrates will do well to resort

freely to the provisions of s 495 I am not quite sure that the section is not intended to aid Magistrates in finding out the truth of a case more speedily and in a more legitimate manner than they otherwise could do It will be the wish and the duty of the person appointed by them to strip the case of any fictitious supports or exaggerated features The private complainant and his witnesses will be entirely under the person so appointed who will have opportunities *out of Court* of getting at the real facts of a case—opportunities which a Magistrate has not or at any rate is supposed not to have Much time will be saved, as the person so appointed will have no other object than to lay the real state of facts before the Magistrate, and if he finds the case to be quite false it would of course be his duty to inform the Magistrate who, however, should satisfy himself that the prosecutor is not mistaken

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CHAPTER XXXIX

OF BAIL

Bail to be taken in case of bailable offence

496 When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer, or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided

'*Is prepared* at any time while in the custody of such officer to give bail Reasonable facilities should be given to an accused for finding bail If persons in custody for a bailable offence wish to send for bail, and are willing to pay for a messenger or telegram being sent the officer in charge of the station is to take the necessary steps without delay' *Metrop Police Orders*

When bail may be taken in case of non-bailable offence

497 When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

See notes under s. 252, *supra*.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

Bond of accused and sureties.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Discharge from custody.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him

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to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest, directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Discharge of sureties.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

When attendance of witness may be dispensed with.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court, that the examination of a wit-

ness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limit of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers as in trials of warrant-cases under this Code.

A witness, a lady residing at Darjeeling, applied to be excused from attendance before the High Court in a case committed by the Deputy Commissioner of Darjeeling, and asked that her evidence should be taken on commission by interrogatories. She filed the affidavit of the Civil Surgeon of Darjeeling, stating that, considering her age and state of health, it would be unadvisable, if not dangerous, for her to go to Calcutta at that time of the year. WILSON, J., refused the application, saying that, in a criminal case, the issue of a commission would be a most unsatisfactory course of proceeding, and one dangerous to the interests of the prisoner. —I. L. R., 8 Calc., 896.

In criminal cases *purdanishin* women are not of right exempted from attendance in Court as witnesses. But if their attendance can be said to cause inconvenience, the Courts may exempt them. However, a complainant is in a different position, and must personally attend; but the Magistrate can make such arrangements for her examination in Court as shall secure her privacy, consistent with the recording of her evidence, according to law, in the presence of the accused. — I. L. R., 5 All., 92. See notes under s. 540, *infra*.

Witnesses in criminal cases should not be examined by commission except in extreme cases of delay, expense, or inconvenience.—*Ibid.*

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same

Commission in case of witness being within Presidency-town.

to the said Presidency Magistrate, who, thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the, return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may

subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Adjournment of inquiry or trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

See s. 33, Evidence Act.

A medical man, in giving evidence, may refresh his memory by referring to his *post-mortem* report, but the report itself cannot be treated as evidence, and no facts can be taken therefrom.—I. L. R., 9 Calc., 455.

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of *any* Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

As amended by Act X of 1886, s. 14

A report signed "Additional Chemical Examiner" is not sufficient.—I. L. R., 10 Calc., 1026. But perhaps it would be sufficient now, the word "any" having been substituted for the word "the" before the words "Chemical Examiner."

Previous conviction or acquittal how proved.

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

It has been held in England that, where evidence of identity is not procurable, a previous conviction may be proved by the warrant of commitment and the evidence of the jailor that the prisoner was received under the warrant.—*R.* v. *Levy*, 8 Cox, C C., 73. *Held*, in Missouri, that the record of the conviction of one of the same name as the defendant raises a presumption of identity, which, if not rebutted, is conclusive.—11 Mo., App., 91. This is a very sensible ruling. Where there is doubt, the complainant or witnesses in the original case may be called, or the village chokidar.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Before depositions can be recorded under this section, it is necessary that the fact of absconding should be established.—I. L. R., 10 Calc., 1097.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which isssued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate *or Chief Presidency Magistrate* within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the persons so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

As amended by s. 4. Act X of 1886.

See note under s 121, *supra*.

The powers contained in ss. 396, 397 (now 514) extend not only to recognizances taken by a Magistrate for the appearance of an accused person, but also to such recognizances when taken by a Police-officer under s. 170.—22 W. R., Cr., 74.

A Magistrate is not justified in forfeiting a recognizance under s. 514, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause why the recognizance should not be forfeited has been issued. That opportunity may arise either upon the prosecution of the accused person for a breach of the peace, or any other offence (see s. 121), in which case the accused, being the defendant, would of course have the right to cross-examine the witnesses for the prosecution; or it may arise upon a substantive application made to the Magistrate to forfeit the recognizance, in which case the witnesses upon whose evidence the rule is granted ought to be present, and subject to be cross-examined by the accused, upon the occasion when cause is shown against the rule. —I. L. R., 4 Calc., 865; and 4 C. L. R, 243.

Appeals from, and revision of, orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently

deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION. — In this section the term 'property' includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

"Regarding which an offence *appears* to have been committed." It is not necessary that there should have been a conviction. Where a person was accused of dishonestly receiving stolen property, knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen,—*held*, that the Magistrate was competent, believing that the property was stolen, to make an order under s. 517 regarding its disposal.—I. L. R., 2 All., 276. Magistrates often think that when an accused has been discharged or acquitted, they are bound to order the property sent up "to be restored to the person in whose possession it was found." This idea is quite erroneous. See also note under s. 523, *infra*.

Where there is a Court of Appeal, resort should be had thereto before application is made to the High Court for the exercise of its powers of revision.

A Government currency note was stolen from A and cashed by B in good faith for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal under s. 520, Criminal Procedure Code; but submitted the case for the orders of the High Court. *Held*, that the case could be disposed of by the Judge under s. 520, and that the words 'Court of Appeal' in that section are not necessarily limited to a Court before which an appeal is pending. *Held* further, that the provisions of s. 76 of the Contract Act did not apply, as the change of a currency note for money is not a contract of sale, and that as the note came honestly into the hands of B, the Magistrate's order was right.—I. L. R., 3 Calc., 379.

Where an order is made by a first class Magistrate for the disposal of property, and such order is not, and does not purport to be made under this section, the Sessions Judge has no jurisdiction to hear an appeal from such order.—I. L. R., 10 Bom., 197; see I. L. R., 1 Bom., 630.

Order may take form of reference to District or Subdivisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Subdivisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision, may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed, pending consideration by the former Court; and may modify, alter or annul such order.

Destruction of libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

See note under this section in my "Comparative Criminal Jurisprudence."

Procedure by police upon seizure of property taken under section 51 or stolen.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

See Act V of 1861, ss. 25-27, as to unclaimed property.

This section is wider than the corresponding provisions of the Code of 1872 (ss. 415 and 416), and they enable the Magistrate to inquire into the ownership of property seized by the police, and deliver it to the person entitled to it, instead of to the person from whom it is taken. I. L. R., 8 Bom., 338.

The issue by the Magistrate of a proclamation under s. 416 (now 523) is probably a 'proceeding' within the meaning of s 439 of the present Code, but under the former Code it was doubted if it was a judicial proceeding under s. 297.—See I. L. R., 2 All., 276.

Sections 523-524 contemplate proceedings preliminary to and independent of inquiry. Upon general principles when there has been an

inquiry or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore the property, the subject-matter of the investigation, into the possession of the person from whom it is taken, unless, as provided for in s. 517, such Court is of opinion that "any offence appears to have been committed" regarding it, when such order as appears right for the disposal of the property may be made.—I. L. R., 1 Bom., 630.

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Subdivisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, *or*

(*e*) *that such an order is expedient for the ends of justice, it may order*—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself; *or*

(4) *that an accused person be committed for trial to itself or to a Court of Session.*

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

As amended by s. 11, Act III of 1884.

It was ruled under the former Code that applications to the High Court for transfer should be made on affidavits in the usual way, and

not by letter to the English Department.—25 W.R., C., 27 ; and I. L. R., 1 Calc., 219.

See notes under this section in my "Comparative Criminal Jurisprudence."

The High Court may now transfer an appeal from a Sessions Court to itself. See s. 29, Letters Patent, 1865 ; I. L. R., 6 Mad., 32.

Adjournment on application under section 526.

526*A*. If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

This section is added by s. 12, Act III of 1884.

Power of Governor-General in Council to transfer criminal cases and appeals.

527. The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Subdivisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Subdivisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

A Magistrate making an order under this section shall record in writing his reason for making the same.

As amended by s. 13, Act III of 1884.

When once process has been issued by a Subordinate Magistrate, the District Magistrate cannot transfer the case to his own file, and then dismiss the complaint under s. 203. He ought to proceed with the case from the stage at which he finds it.—10 B. L. R., App., 26. Power to withdraw should be exercised only when it is absolutely necessary in the interests of justice. When one of the parties to a case applies to have it withdrawn and referred to another Magistrate, the District Magistrate should give the other party notice of such application, and an opportunity of showing cause why such application should not be granted.—I. L. R., 3 All., 749. See also I. L. R , 8 Calc., 393.

Even under the former law, when the Magistrate was not bound to give any reasons, the High Court condemned the action of a District Magistrate, who removed a case from a Deputy Magistrate's file, when the latter, having taken all the evidence for the prosecution, had expressed an opinion that the evidence for the prosecution was not sufficient to support the charge.—5 B. L. R., App., 45.

When a case under trial is removed under s. 528, the whole proceedings must commence *de novo*.—24 W. R., Cr., 53.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search-warrant under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;
(*h*) to sell property under section 524 or section 525; or
(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

(*a*) attaches and sells property under section 88;
(*b*) issues a search-warrant for a letter in the Post Office, or a telegram in the Telegraph Department;
(*c*) demands security to keep the peace;
(*d*) demands security for good behaviour;
(*e*) discharges a person lawfully bound to be of good behaviour;
(*f*) cancels a bond to keep the peace;
(*g*) makes an order under section 133 as to a local nuisance;
(*h*) prohibits under section 143 the repetition or continuance of a public nuisance;
(*i*) issues an order under section 144;
(*j*) makes an order under Chapter XII;
(*k*) takes cognizance under section 191, clause (*c*), of an offence;
(*l*) passes a sentence under section 349, on proceedings recorded by another Magistrate;
(*m*) calls under section 435, for proceedings;
(*n*) makes an order for maintenance;
(*o*) revises under section 515, an order passed under section 514;
(*p*) tries an offender;
(*q*) tries an offender summarily; or
(*r*) decides an appeal;

his proceedings shall be void.

The list in s. 530 is probably intended by the Legislature to be exhaustive.

"(*q*) Tries an offender summarily." This read with the other items and with s. 529 clearly means a summary trial by a Magistrate who is not invested with summary powers. The ruling in 22 W. R., Cr., 42, is quite indefensible, and opposed to the plain words of the law.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Subdivision or other local area, unless it appears that such error occasioned a failure of justice.

An order was set aside where the trial was held in a wrong province. —13 B. L. R., App., 4.

"Or other local area." Under the ordinary rules of interpretation, this must mean an area smaller than a Sessions Division, so that the above ruling is probably still applicable.

When irregular commitments may be validated.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

This section does not contemplate a case which has been inquired into in a district in which it was not committed. In such a case the Court of Session should not accept the commitment.—I. L. R., 3 All., 258. But see s. 531. Where a commitment was made to a Court of Session which had no territorial jurisdiction, *held*, that the commitment should not be set aside.—I. L. R., 8 Bom., 312.

Non-compliance with provisions of section 164 or 364.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be

admitted if the error has not injured the accused as to his defence on the merits.

"Have not been fully complied with." A Division Bench of the Madras High Court have held that where such provisions have *not been complied with at all*, s. 533 cannot be used to remedy the defect.—I. L. R., 9 Mad., 224. This ruling appears to be a mere "*apex juris*," and is utterly opposed to the clear intention of the section.

Omission to ask question prescribed by section 454, clause 2.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

In order to show that there had been no valid acquittal in consequence of the absence of the formal charge in writing, it is necessary to show that the absence of such charge has been in itself the cause of failure of justice.—3 C. L. R., 131. Even under the 1862 Code, the High Court refused to interfere in a case in which no charge had been drawn up. The omission to draw up a formal charge could not have prejudiced the accused, as he knew the case against him and had a full opportunity of answering it.—15 W. R., Cr., 4. The point to consider is, whether the accused knew what was the case he had to meet.

"It shall order that a charge shall be framed, &c." This direction is imperative and not merely directory To use the words of the French Code d'Instruction Criminalle, it is "prescrit sous peine de nullité." Appellate and Revisional Courts, intentionally disobeying this plain and specific direction of the law, should be prosecuted under ss. 166, 217, &c., P. C., no less than wretched Police-officers, who are almost invariably punished, if it can be proved that they have disobeyed the provisions of ss. 154, 155, 167, 169, 172, &c., P. C. If there has been no failure of justice, the omission of a charge has no effect. If the omission has occasioned a failure of justice, a charge is to be framed, *and the trial recommenced from that point*. It is much to be regretted that High Court Judges should sometimes disobey the provisions of this section. See notes under s. 537 in my "Comparative Criminal Jurisprudence."

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial by jury of offence triable with assessors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

See s. 269, *supra*, as amended by s. 9 of Act X of 1886.

The trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by jury is not invalid.—I. L. R., 3 Calc., 765.

Where a case, to which Government had not extended trial by jury, was wrongly tried by jury instead of with assessors, the Judge's charge was treated as his judgment in the case and the prisoner's appeal was heard on the facts.—30 W. R., Cr., 80; 18 W. R., Cr., 59.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

See s. 167, Evidence Act.

Where an accused had been convicted under a repealed Act, and the Judge in his letter of reference said that the accused might have been convicted under certain sections of the Penal Code, the High Court under s. 283 of the old Code refused to alter or reverse the finding or sentence, as no substantial injustice had been done to the convicted persons.—15 W. R., Cr., 40. See also 17 W. R., Cr., 50.

Under the former Code it was held, that the words "material error" in s. 297 are equivalent to the effect of s. 283. That is, no error or defect can be material, unless it be clearly shown that a failure of justice has thereby been occasioned.—12 B. L. R., 253, note. The words of the present Code are much stronger. The rule of the common law that penal statutes are to be construed strictly clearly has no more

application to the Indian Codes than it has to the Codes of New York and Louisiana. See the quotations from those Codes under this section in my "Comparative Criminal Jurisprudence."

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any commissioner or other person appointed by such Court for that purpose, or any Judge, or any commissioner for taking affidavits in any Court of Record in British India, or any commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Power to summon material witness, or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

See note under s. 165, Evidence Act.

A Magistrate is empowered to record both oral and documentary evidence after the witnesses for the defence have been examined.—I. L. R., 2 All., 253. An accused, who has been discharged for want of evidence, may subsequently be examined as a witness for the prosecution.—7 W. R., Cr., 44. This section includes proceedings under s. 145, Criminal Procedure Code.—9 B. L. R., App., 45

Pardanashin ladies are not exempt from appearance as witnesses in criminal cases, though they are exempted in civil cases. Personal attendance can be dispensed with only on the ground of delay, expense,

or inconvenience. See s. 503, *supra*. In the application of *Rookia Banu* v. *John B. Roberts, Esq.*, Coroner of Calcutta, 17th February 1868, Mr. Justice Norman expressed his opinion that a pardanashin lady cannot be compelled to leave her palanquin in order to give her evidence. This privilege must clearly depend on the importance of the case; otherwise the provisions of s. 363 (*vide supra*) would be a dead-letter. The Judge or Magistrate is bound to record any material remarks respecting demeanour. In a later case the High Court have allowed a pardanashin lady to be examined on commission (*Hurro Soondri Chowdrani*, Petitioner, I L. R., 4 Calc., 20). But in this case the Government were not represented; and it is possible that, had the point been properly argued, the decision of the Court might have been different. See notes under s. 503.

It has been ruled several times by the High Court with reference to trials in the Sessions Court, that all the persons who are alleged, or are known, to have knowledge of the facts, ought to be brought before the Court and examined.—I. L. R, 10 Calc., 1070. In a case in the N.-W. Provinces a Sessions Judge insisted on examining some witnesses whom he considered essential, though the barrister for the defence did not wish them to be examined. For this he was censured by STRAIGHT, J., who appears to have been unaware of the provisions of this section.

Power to appoint place of imprisonment.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

As to transportation, see Act IX, 1882.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.

Added by Act X, 1886, s. 15.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

The form of oath or affirmation for interpreters is as follows :—

I (swear) solemnly declare that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, and explain (so help me God).

Expenses of complainants and witnesses.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor-General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Under provisions of s. 421 (now 544) of the Criminal Procedure Code (Act X of 1872), the following rules were framed and are in force :—

2. The Criminal Courts are authorized to pay, at the rates specified below, the expenses of complainants or witnesses (1) in cases in which the prosecution is instituted, or carried on, by or under the orders, or with the sanction of, the Government, or any Judge, Magistrate, or other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service ; (2) in all cases entered in column 5 of the schedule appended to the Criminal Procedure Code as not bailable ; and (3) of witnesses in all cases in which they are compelled by the Magistrate of his own motion to attend under the provisions of s. 351 (now 540) of the Code.

3. No payment shall be made by Government to witnesses summoned at the instance of the complainant, under s. 361 (now 244), unless the prosecution appears to the Court or Magistrate to be in furtherance of the interests of public justice.

4. As a general rule, the allowances to be paid to complainants and witnesses shall be a diet-allowance, calculated at the following rates:—

(a.) For the ordinary labouring class of natives, two annas per diem.

(b.) For natives of higher rank in life, four annas per diem.

(c.) For Europeans and natives of superior rank, a diet-allowance according to circumstances, up to a limit of Rs. 3 per diem.

5. In addition to the above, charges for toll at ferries will be allowed at the authorized rates, to the extent to which they may have been actually incurred.

6. Other travelling expenses will be given only when the journey could not have been performed on foot, or in the case of persons whose age, position, and habits of life render it impossible for them to walk In such cases, in addition to diet-allowance and ferry tolls, travelling allowance shall be given at the following rates:—

(1) When the journey is by rapid dâk by road, the actual expenses incurred up to a maximum limit of four annas a mile.

(2) Where the journey is wholly or partly by rail—

(a.) For the ordinary class of natives, actual railway fare by the lowest class.

(b.) For natives of higher rank in life, third class railway fare.

(c.) For Europeans and natives of superior rank, second class railway fare.

(3) In the eastern districts of Bengal, where the only mode of travelling is by water, the actual expenses incurred for boat hire up to a limit of Rs. 2 per diem.

7. From the above rules are excepted:—

(1) Government servants, who shall receive no diet-allowance, but shall be entitled to actual travelling expenses only to an amount not exceeding what they would be entitled for the journey under the rules ordinarily applicable to officers in the departments to which they belong.

(2) Witnesses following any profession, such as medicine or law, to whom a special allowance shall be given, according to circumstances.

8. Officers will be held responsible that parties of witnesses are brought to Court together, as far as possible, so as to save expense. The hire of more than one boat shall not be allowed in one case, unless the presiding officer is satisfied that the witnesses could not have arranged to come together.

9. The number of days for which diet-allowance should be granted will be determined by the officer ordering payment in each case.

10. For this purpose, and for regulating the reimbursement of tolls paid, a table shall be prepared and kept in each Court, showing the distance of each thana from the sudder station and subordinate stations, and the number of intermediate ferries to be crossed, and the authorized rates of charges for tolls at each of those ferries, the existence or absence of roads or waterways being also noted in the table.

Power of Court to pay expenses or compensation out of fine.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise, a sentence of fine, or a sentence

of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) In defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

See notes under this section in my "Comparative Criminal Jurisprudence."

In a case of theft, a Magistrate cannot award part of the fine as compensation to a person who has innocently purchased the stolen property.—I. L. R., 6 Mad., 286.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

India Notification No. 1683, of the 19th September 1870, remits the fees chargeable in respect of copies of final sentences or orders, which prisoners desirous of appealing therefrom are required to file with their petition of appeal. Notification No. 2520, of the 5th April 1872, exempts copies of final sentences or orders (as well as judgments) which parties desirous of appealing are required to file with their petition of appeal, provided that the party who is desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same. Notification No. 7317,

of the 18th December 1874, exempts copy of the judgment or order given by a Criminal Court under s. 464 (now 367), C. P. C., to the accused person or persons affected by such judgment or order, provided that such person is in jail, or that the Court for some special reason sees fit to give such copy free of cost.

Notification No. 2041, of the 20th July 1877, remits the fees in respect of (1) copies of documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered for the purpose of conducting any trial or investigation on the part of Government before any Criminal Court; (2) copies of all documents which any such person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, &c.; (3) copies of judgments and depositions required by officers of the Police Department for conducting appeals on behalf of Government before any Criminal Court. Notification No. 1143, of the 2nd November 1883, supersedes No. 996, of 6th June 1873, and exempts:—

(1) Copy of the charge given to the accused under s. 210, C. P. C.;

(2) Copy of the evidence of witnesses given to the accused under s. 219, C. P. C.;

(3) Copy of the judgment in any case other than a summons-case, or of the heads of charges to the jury given to the accused under s. 371, C. P. C;

(4) Copy of an order of maintenance given under s. 490.

(5) Copy of the Judge's charge to the jury, or of any order or deposition or other part of the record furnished free of cost (that is, when the Court thinks fit to do so) to a person affected by a judgment or order under s. 548, C P. C.

It will be observed that the proviso to the notification of 1872 appears to supersede the notification of 1870, but, from Macpherson and Wigley's "Lists of Enactments," they both appear to be in force.

Apparently prosecutors whose charges are dismissed are affected by the order of discharge, and are, therefore, entitled to obtain a copy of the order. But it is doubtful whether they are entitled to copies of the depositions. See I. L. R., 8 Calc., 166. Neither prosecutor nor accused are entitled to copies before a case has been decided or committed.

When the Judge's notes form the only record of a case, the parties should be allowed to have copies of such notes on paying the authorized charge for making the same.—1 Mad. H C. R., 138.

Delivery to Military authorities of persons liable to be tried by Court-Martial.

549. The Governor-General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to Military law shall be tried by a Court to which this Code applies or by Court-Martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 14, to be tried by a Court-Martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him together with a statement of the offence of which he

is accused, to the Commanding Officer of the regiment, corps or detachment to which he belongs, or to the Commanding Officer of the nearest military station, for the purpose of being tried by Court-Martial.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

See s. 5, Penal Code, and note thereunder.

Powers of superior officers of police.

550. Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Power to compel restoration of abducted females.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

A woman over fourteen is to be restored *to her liberty*. The Magistrate cannot order the husband to carry her off forcibly. The woman should be directed to go where she pleases.

Compensation to person groundlessly given in charge in Presidency-town.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

There is no reason why the provisions of this section should not be extended to all Magistrates. Indeed it would be a good thing to do so, having regard to the numerous technical pitfalls placed in the way of convictions under s. 211, Penal Code.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

553. With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings, and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

EXPLANATION.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

The High Court have ruled that a conviction for an offence against any municipal law or regulation, had before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad.—I. L. R., 10 Calc., 194. The *ratio decidendi* in this case may be sound, but the ruling has gone farther than the English cases *in pari materiâ*.

A *gomasta*, employed in a Court of Wards' estate, goes to a village to collect rents, and owing to some dispute, is assaulted by the ryots. Is the District Magistrate debarred from trying the case, because as Collector the management of the estate is in his hands? Are High Court Judges, being paid servants of Government, debarred from trying suits brought by and against Government? See the cases quoted under this section in my "Comparative Criminal Jurisprudence."

Accused was convicted by the District Magistrate under s. 188, P. C., for disobeying an order passed by Municipal Commissioners. The Magistrate was Chairman of the Commissioners, and was present at the meeting at which such order was passed. *Held*, that he was disqualified from trying the case. *Sargeant* v. *Dale* (L. R., 2 Q. B. D., 558) cited and followed.—I. L. R., 10 Calc., 1030. "The law in laying down that legal interest disqualifies has regard not so much perhaps to the motives which might be supposed to bias the Judge as to the susceptibilities of the litigant parties." An officer who exercises executive and judicial functions, having himself formed and expressed an opinion on the merits of a certain matter in his executive capacity, and having further advised and directed litigation in support of his view, is, in consequence, disqualified from dealing as a Judge with the same question when it has to be dealt with judicially.—I. L. R., 10 Calc., 915. Indian Judges, in applying the English law concerning interest, have considerably narrowed it. One or two rulings exhibit a very imperfect acquaintance with the English decided cases on the subject. It has been ruled in England that, in order to disqualify a Justice of the Peace, it is not sufficient to show that, as a member of the Town Council, he has a pecuniary interest in the result of the information or complaint, or that the

corporation of which he is a member, are the prosecutors; but it must be established that he has such a *substantial interest* in the result of the hearing as to make it *likely that he has a real bias* in the matter.—*R.* v. *Handsley*, 8 Q. B. D., 383. See other cases collected under this section in my "Comparative Criminal Jurisprudence." The ruling in I. L. R., 10 Calc., 1030, is diametrically opposed to the case of *R.* v. *Justices of Huntingdon*, 4 Q. B. D., 522. In these cases Justices who, as members of the Town Council, had passed an order under 34 and 35 Vic., c. 56, sat to hear a complaint of non-observance of the order: it was held that they had not such an interest in the subject-matter as would oust their jurisdiction. This is a sensible ruling.

No officer in Government service can be permitted to hold lands in any district in which he exercises civil or criminal jurisdiction. C. O. No. 202, of 25th April 1846.

"The memorialist was prosecuted by the Collector, and he alleges that when the Sessions Judge came to try the case, he resided at the Collector's house, and was greatly prejudiced by the Collector against the memorialist. I have no doubt that the latter assertion is quite unfounded, but I think it would be well if your Grace in Council would suggest to the Judges through the High Court, to avoid, as far as possible, becoming the guests of those who are interested in cases, civil or criminal, which will eventually be submitted to the Judge's decision. All possible imputation of prejudice against the weaker party will thus be avoided." Despatch of Secy. of State for India. C. O. No. 7, of 7th April 1877.

Power to decide language of Courts.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Powers of Governor-General in Council and Local Government exercisable from time to time.

557. All powers conferred by the Code on the Governor-General in Council or on the Local Government may be exercised from time to time as occasion requires.

Pending cases.

558. The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Officers concerned in sales not to purchase or bid for property.

559. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

This section is added by s. 16, Act X of 1886. See s. 169, P. C.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a.*)—*Statute.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(*b.*)—*Acts of the Governor-General in Council.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process ...	So much as has not been repealed.
XLV of 1860 ...	Penal Code ...	The illustrations to section 214.
V of 1861 ...	Police Act ...	Section 6 and the last nine words of section 24. Section 35, down to and including the words 'Provided that.'
XVIII of 1862 ...	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI of 1864 ...	Whipping ...	Section 7.
II of 1869 ..	Justices of the Peace ..	So much as has not been repealed.

ENACTMENTS REPEALED.—(*Continued.*)

(*b.*)—*Acts of the Governor-General in Council.*—(Continued.)

Number and year.	Subject.	Extent of repeal.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ..	Punjab Laws ..	So far as it relates to Bengal Reg XX of 1825.
X of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent ...	So far as it relates to Bengal Reg XX of 1825
X of 1875 ...	High Courts' Criminal Procedure.	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX of 1875 ...	Central Provinces Laws...	So far as it relates to Bengal Reg. XX of 1825.
XVIII of 1876 ...	Oudh Laws ..	Ditto.
IV of 1877 ..	Presidency Magistrates. .	The whole Act, except section 57.
XXI of 1879 ...	Extradition ...	Chapter III.
X of 1881 ...	Coroners ..	Sections 8 and 9

ENACTMENTS REPEALED.—(*Concluded.*)

(*c.*)—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation XX of 1825 ...	Jurisdiction of Courts-martial.	So much as has not been repealed.
III of 1872 ...	Santhal Parganas Settlement.	So far as it relates to Act X of 1872.
IX of 1874 ...	Arakan Hills District Laws	So far as it relates to Acts II of 1869, X of 1872 and XI of 1874.
III of 1877 ...	Ajmer Laws ..	So far as it relates to Bengal Regulation XX of 1825.

(*d.*)—*Act of the Governor of Fort St. George in Council.*

Number and year.	Subject.	Extent of repeal.
VIII of 1867 ...	Police	Section 9.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ..	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

CHAPTER V.—ABETMENT.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable.	According as the offence abetted is compoundable or not.	Imprisonment of either description for 7 years and fine.	The Court by which the offence abetted is triable.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...	Not bailable.	Ditto ..	Imprisonment of either description for 10 years.	Ditto.

	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
123	Concealing with intent to facilitate a design to wage war.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in secs. 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code	8 By what Court triable.
134	Abetment of such assault, if the assault is committed.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons...	Ditto ...	Ditto ..	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
147	Rioting ...	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence.	The Court by which the offence is triable.

CHAPTER VIII—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	According as the offence is bailable or not.	Not compoundable.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	The Court by which the offence is triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons...	Bailable ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

	If not committed ...	Ditto ...	Summons .	Ditto ...	Ditto ...	Imprisonment of either description for 6 months or fine or both.	Ditto
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine ...	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for six months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	Or to go armed ...	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray ...	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto .	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the 1st class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.

	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
178	Refusing oath when duly required to take oath by a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
181	Knowingly stating to a public servant on oath as true that which is false.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.

186	*Obstructing public servant in discharge of his public functions.*	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same as for the offence.	Ditto.

196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, of giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If punishable with less than 10 years' imprisonment.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Ditto* ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
	* "If offence charged be punishable with imprisonment for 7 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class."

* The 2nd para. of 211 is added by Act X of 1886, s. 17.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If offence charged be capital or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto	..	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without a warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Warrant...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court or Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Shall not arrest without rant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, with or without fine.	Court of Session.
	If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehenson of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
"225A	*Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for—						
	(a) in case of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	(b) in case of negligent omission or sufferance.	Ditto ...	Summons...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
225B	*Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto."

* The entries 225A and 225B are substituted by Act X of 1886, s. 18.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.—(*Concluded.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
226	Unlawful return from transportation.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons...	Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting coin.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(*Continued.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Court of Session.
245	Unlawfully taking from a mint any coining instrument.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.—(*Concluded.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.—(*Concluded.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
265	Fraudulent use of false weight or measure.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons.	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adultering food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink, knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
274	Adultering any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.

285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ..	Fine of 200 rupees ...	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—(*Concluded.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
293	Having in possession obscene book, &c., for sale or exhibition.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
294	Obscene songs ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
294A	Keeping a lottery-office ...	Shall not arrest without warrant.	Summons	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Fine of 1,000 rupees ...	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

297	Trespassing in place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Compoundable.	Ditto ...	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of Offences affecting Life.—(Concluded.)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
304A	Causing death by rash or negligent act.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If such act cause hurt to any person.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life and fine	Court of Session.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...	Bailable ..	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.—(Concluded.)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Sessions.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
			Of Hurt.				
323	Voluntarily causing hurt...	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.

324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of Hurt.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Ditto ..	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.

335	*Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.*	*May arrest without warrant.*	*Ditto* ...	*Ditto* ...	*Compoundable when permission is given by the Court before which a prosecution is pending.*	*Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.*	*Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class.*
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 509 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Of Wrongful Restraint and Wrongful Confinement.

341	Wrongfully restraining any person.	May arrest without warrant.	Summons...	Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years and fine.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of Wrongful Restraint and Wrongful Confinement.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
344	Wrongfully confining for ten or more days.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons...	Ditto ...	Compoundable.	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Continued.*)

Of Kidnapping, Abduction, Slavery, and Forced Labour.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.

369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour.	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

Of Rape.

376	Rape	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.—(*Concluded.*)

Of Unnatural Offences.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
377	Unnatural offences ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

Of Extortion.

384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable* with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Extortion.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence threatened be an unnatural offence.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life...	Court of Session.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

	If committed on the highway between sunset and sunrise.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Rigorous imprisonment for 7 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
395	Dacoity ...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Court of Session.
396	Murder in dacoity ...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.
399	Making preparation to commit dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Criminal Misappropriation of Property.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of the Receiving of Stolen Property.——(Concluded.)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	Of Cheating.						
417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

419	Cheating by personation ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compounable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Mischief.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
426	Mischief	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	* May arrest without warrant.	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.

* See Act XI of 1874, section 4.

429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Continued.*)

Of Mischief.—(Concluded.)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not	7 Punishment under the Indian Penal Code.	8 By what Court triable.
435	Mischief by fire or explosive substance with intent to cause damage to amount 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto

440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass ...	May arrest without warrant.	Summons...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass ...	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.—(*Concluded.*)

Of Criminal Trespass.—(Concluded.)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
453	Lurking house-trespass or house-breaking.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Ditto .	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ..	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery.	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.—(*Continued.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 7 years, and fine.	Court of Session.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

Of Trade and Property Marks.

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—(*Concluded.*)

Of Trade and Property Marks.—(Concluded.)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
488	Making use of any such false mark.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
494	Marrying again during the life-time of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.—(*Concluded.*)

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Shall not arrest without warrant.	Warrrant...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
497	Adultery ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation. ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.

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CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.—(*Concluded.*)

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Shall not arrest without warrant.	Warrant.	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	.....	According to the provisions of section 29 of this Code.
If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable.*	Ditto ...	.....	
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons...	Bailable ...	Ditto ...	.....	
If punishable with fine only.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	.....	

* See *Empress* v. *Tegha Singh*, I. L. R., 8 Calc., 473.

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.

(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.

(3) Power to issue proclamations in cases judicially before him, section 87.

(4) Power to attach and sell property in cases judicially before him, section 88.

(5) Power to restore attached property, section 89.

(6) Power to issue search-warrant, section 96.

(7) Power to endorse a search-warrant and order delivery of thing found, section 99.

(8) Power to record statements or confessions during a police investigation, section 164.

(9) Power to authorize detention of a person during a police investigation, section 167.

(10) Power to detain an offender found in Court, section 351.

(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.

(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.

(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.

(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.

(4) Power to require security to keep the peace, section 107.

(5) Power to require security for good behaviour, section 109.

(6) Power to make orders, &c., in possession cases, sections 145, 146 and 147.

(7) Power to commit for trial, section 206.

(8) Power to stop proceedings when no complainant, section 249.

(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.

(2) Power to direct warrants to landholders, section 78.

(2a*) Power to require security for good behaviour, section 110.

(3) Power to make orders as to local nuisances, section 133.

(4) Power to make orders prohibiting repetitions of nuisances, section 143.

(5) Power to make orders under section 144.

(6) Power to hold inquests, section 174.

(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.

(8) Power to entertain complaints, section 191.

(9) Power to receive police reports, section 191.

(10) Power to entertain cases without complaint, section 191.

(11) Power to transfer cases to a Subordinate Magistrate, section 192.

(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.

(13) Power to sell property alleged or suspected to have been stolen, &c., section 524.

(14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.

(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.

(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.

(4) Power to cancel bond for keeping the peace, section 125.

(5) Power to try summarily, section 260.

(6) Power to quash convictions in certain cases, section 350.

(7) Power to hear appeals from orders requiring security for good behaviour, section 406.

(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.

(9) Power to call for records, section 435.

(10) Power to revise orders passed under section 514; section 515.

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* Act X, 1886, s. 19.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to require security for good behaviour, section 110: (2) Power to make orders as to local nuisances, section 133: (3) Power to make orders prohibiting repetitions of nuisances, section 143: (4) Power to make orders under section 144: (5) Power to hold inquests, section 174: (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186: (7) Power to take cognizance of offences upon complaint, section 191: (8) Power to take cognizance of offences upon police reports, section 191: (9) Power to take cognizance of offences upon information, section 191: (10) Power to try summarily, section 260: (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407: (12) Power to sell property alleged or suspected to have been stolen, &c., section 524.
	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to transfer cases, section 192.

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to pass sentences of whipping, section 32: (2) Power to make orders prohibiting repetitions of nuisances, section 143: (3) Power to make orders under section 144: (4) Power to hold inquests, section 174: (5) Power to take cognizance of offences upon complaint, section 191: (6) Power to take cognizance of offences upon police reports, section 191: (7) Power to take cognizance of offences upon information, section 191: (8) Power to commit for trial, section 206.
	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to commit for trial, section 206.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section* 68.)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*), before the (*Magistrate*) of , on the day of

Herein fail not.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

II.—Warrant of Arrest.

(*See section* 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

Whereas of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me.

Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

(*See section* 76.)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of), to attend before me on the day of , and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section* 86.)

I, (*name*), of , being brought before the District Magistrate of (*or, as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of , that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of Rs.

Dated this day of , 18 .

(*Signature.*)

IV.—Proclamation requiring the Appearance of a Person Accused.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

V.—Proclamation requiring the Attendance of a Witness.

(*See section* 87.)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock, to be examined touching the offence complained of.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VI.—Order of Attachment to compel the Attendance of a Witness.

(*See section* 88.)

To the Police-officer in charge of the Police-station at

Whereas a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and

give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees , which you may find within the District of , and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section* 88.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section* 88.)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and

thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section* 90.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section* 96.)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence);

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

IX.—Warrant to search suspected Place of Deposit.

(*See section* 98.)

To (*name and designation of a Police-officer above the rank of a Constable*).

Whereas information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*) —[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents *or* counterfeit stamps, *or* false seals, *or* counterfeit coin (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

X.—Bond to keep the Peace.

(*See section* 106.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of ,
I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections* 109 *and* 110.)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty

and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*) We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees

Dated this day of , 18 .

(*Signature.*)

XII.—Summons on Information of a Probable Breach of the Peace.

(*See section* 114.)

To of .

Whereas it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorized agent) at the Office of the Magistrate of on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add,* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees (*each, if more than one*)], that you will keep the peace for the term of .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIII.—Warrant of Commitment on Failure to find Security to keep the Peace.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name and address*) appeared before me in person (*or* by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with

this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section* 123.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties), entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See sections* 123 *and* 124.)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section* 133.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced) ;

or

WHEREAS, &c., &c. (*as the case may be*) ;

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of , on the day of next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and

not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.;

or

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.
(*See section* 138.)

WHEREAS on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more Jurors*) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.
(*See section* 140.)

To (*name, description and address*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.
(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the

nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section* 143.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*).

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section* 144.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXII.—Magistrate's Order declaring Party entitled to retain Possession of Land, &c., in Dispute.

(*See section* 145.)

It appearing to me, on the grounds duly recorded, that a dispute likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true;

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIII.—Warrant of Attachment in the Case of a Dispute as to the Possession of Land, &c.

(*See section* 146.)

To the Police-officer in charge of the Police-station at [*or* To the Collector of].

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(*See section* 147.)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section* 169.)

I, (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of , *or* and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above-said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XXVI.—Bond to prosecute or give Evidence.

(*See section* 170.)

I, (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or*, to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section* 218.)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

XXVIII.—Charges.

(*See sections* 221, 222, 223.)

(I).—Charges with one Head.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

On Penal Code, section 121.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

(2) That you, on or about the day of , at with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 124.

On section 161.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(9) That you, on or about the day of , at , robbed [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 241.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 302 and 304.

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

(4) That you, on or about the day of at , in the course of the inquiry into before , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ," one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court"]

(III).—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, (*name and office of Magistrate, &c.*,) hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session [*or* { High Court, / Magistrate, } *as the case may be.*]

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections* 245 *and* 258.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the , day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you, the said Superintendent (*or* Keeper) to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section* 250.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*), and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections* 68 *and* 252.)

To of

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*), and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall, without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXII.—Precept to District Magistrate to summon Jurors and Assessors.

(*See section* 326.)

To the District Magistrate of

Whereas a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*)

(*Signature.*)

XXXIII.—Summons to Assessor or Juror.

(*See section* 328.)

To (*name*) of (*place*).

Pursuant to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIV.—Warrant of Commitment under Sentence of Death.

(*See section* 374.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXV.—Warrant of Execution on a Sentence of Death.

(*See section* 381.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of , 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you, the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVI.—Warrant after a Commutation of a Sentence.

(*See sections* 381 *and* 382.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Session held on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*);

This is to authorize and require you, the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section* 386.)

To (*name and designation of the Police-officer or other person or persons, who is or are to execute the warrant.*)

Whereas (*name and description of the offender*) was on the day of , 18 , convicted before me of the offence of

(*mention the offence concisely*), and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section* 480.)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIX.—Magistrate's or Judge's Warrant of Commitment of Witness refusing to Answer.

(*See section* 485.)

To (*name and designation of officer of Court*).

Whereas (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days,

or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section* 488.)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) _____ (*Signature.*)

XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section* 488.)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Give under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLII.—Bond and Bail-bond on a preliminary Inquiry before a Magistrate.

(*See sections* 496 *and* 499.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XLIII.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See section* 500.)

To the Superintendent (*or* Keeper) of the Jail at
(*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIV.—Warrant of Attachment to enforce a Bond.

(*See section* 514.)

To the Police-officer in charge of the Police-station at

Whereas (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has

by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the District of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Give under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLV.—Notice to Surety on Breach of a Bond.

(*See section* 514.)

To of

Whereas on the day of , 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVI.—Notice to Surety of Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To of

Whereas on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section* 514.)

To

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant, and him safely to keep in the said jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section* 514.)

To (*name, description and address*).

Whereas on the day of , 18 , you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees ; or to show cause before me within days, why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To (*name and designation of Police-officer*) at the Police-station of .

WHEREAS (*name and description*) did on the day of 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees , which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*) ;

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

LII.—Warrant of Attachment and Sale on Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To the Police-officer in charge of the Police-station at

Whereas (*name, description and address*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c. of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

THE INDIAN EVIDENCE ACT,

ACT I OF 1872, AS AMENDED BY ACT XVIII OF 1872.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

"It may be that, as observed by Mr. Norton in his preface (Law of Evidence, 8th Edition), the framer of the Act over-estimated what had been done, when he claimed to have reproduced within the compass of his 167 sections the whole of Taylor's work that was applicable to India, and there can be no doubt that cases must arise for which no positive solution can be found in the Act itself, and in such cases we shall probably be justified, and shall always be safe, in adopting English rules, *in so far as they follow or are in accord with the general tenor of the Act.* But in respect of matters expressly provided for in the Act, we must, so to say, start from the Act, and not deal with it as a mere modification of the Law of Evidence prevailing in England."—*Per* JACKSON, J., in the case of the *Empress* v. *Ashutosh Chuckrabutti and others.*—I. L. R., 4 Calc., 483.

Short title.

1. This Act may be called "The Indian Evidence Act, 1872:"

Extent.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits presented to any Court, or Officer, nor to proceedings before an Arbitrator;

Commencement of Act.

and it shall come into force on the first day of September 1872.

Repeal of enactments.

2. On and from that day the following laws shall be repealed:—

(1) All rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India:

(2) All such Rules, Laws and Regulations as have acquired the force of law under the twenty-fifth section of 'The Indian Councils Act, 1861,' in so far as they relate to any matter herein provided for; and

(3) The enactment mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpretation-clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

'Courts.'

'Court' includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

'Court.' See definition of 'proved.' In a case tried by Judge and jury, the 'Court' must mean both. The definition does not necessarily *exclude* a jury, for when a definition is intended to be exclusive, it would seem the form of words (as in the next following definition) is "means and includes." —I. L. R., 4 Calc., 493.

'Court.' See definition of 'evidence.' See also ss. 160, 161, C. P. C., from which it would appear that a police-officer making an investigation is a 'Court.'

'Fact.'

'Fact' means and includes—

(1) any thing, state of things or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*.) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*.) That a man heard or saw something, is a fact.

(*c*.) That a man said certain words, is a fact.

(*d*.) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*.) That a man has a certain reputation, is a fact.

'Relevant.'

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

'Facts in issue.'

The expression 'facts in issue' means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustration.

A is accused of the murder of B.
At his trial the following facts may be in issue:—
That A caused B's death;
That A intended to cause B's death;
That A had received grave and sudden provocation from B;
That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

'Document.'

'Document' means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration.

A writing is a document.
Words printed, lithographed or photographed are documents.
A map or plan is a document.
An inscription on a metal plate or stone is a document.
A caricature is a document.

'Evidence.'

'Evidence' means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence:

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

'Proved.'

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved." The words "matters before it" and not "evidence" are used in this definition. Therefore, where a Court has made a local investigation, the result of such investigation should be considered. But such result should be put on paper. A fact may be orally admitted in Court, and such admission would not come within the definition of the word evidence. Still it is a matter which the Court would have to take into consideration. So the results of a local investigation must be accepted

as correct or rejected as incorrect; but they cannot be excluded from consideration.—I. L. R., 9 Calc., 363.

It is a common habit for pleaders to ask for local investigations and then, if the result is unfavourable to their clients, to urge that such investigation cannot be considered at all.

'Disproved.'

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

'Not proved.'

A fact is said not to be proved when it is neither proved nor disproved.

'May presume.'

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

'Shall presume.'

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

'Conclusive proof.'

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b*.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*.) A is accused of the murder of B by beating him. Whatever was said or done by A or B, or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*.) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

See note under s. 14.

Facts which are occasion, cause, or effect of facts in issue.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*.) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b*.) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than statements: but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a.*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b.*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c.*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e.*) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—'the police

are coming to look for the man who robbed B,'—and that immediately afterwards A ran away, are relevant.

(*g*.) The question is, whether A owes B Rs. 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—'I advise you not to trust A, for he owes B 10,000 rupees,'—and that A went away without making any answer, are relevant facts.

(*h*.) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(*i*.) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*.) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(*k*.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complant was made, are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section 32, clause (1), or

as a corroborative evidence under section 157.

In the case of *Boddy* v. *Boddy and Grover* (30 L. J., P. & M. 23), evidence of acts of adultery subsequent to the date of the last act charged was held to be admissible for the purpose of showing the character and quality of previous acts of improper familiarity.—I. L. R., 6 Calc., 658.

The prisoner was indicted for theft and receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered that his courier bag, containing his watch, chain, and a sum of money, had been stolen. He reported his loss to a Railway Police Inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present. PHEAR, J., held, that this report was admissible under s. 8, illus. (*h*).

The *Standing Counsel* next tendered evidence of a statement made by the prisoner to the constable who arrested him, to the effect that the watch and Rs. 1,000 had been given to him by his sister, and that he had bought the chain.

PHEAR, J., observing that there is a distinction in the Evidence Act between admissions and confessions, admitted the evidence.—10 B. L. R., App., 2.

Illus. (*i*). It is unsafe in this country to infer too much from the fact of absconding. Often a whole village absconds in fear after the commis-

sion of some serious crime. The High Court remark in a certain case "A man who runs away may be, and often is, innocent, and any presumption of guilt which may arise from such a course, is usually but a very small item in the evidence on which a conviction is based."—5 W. R., Cr., 30.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a.*) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b.*) A sues B for a libel imputing disgraceful conduct to A. B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant, if it affected the relations between A and B.

(*c.*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d.*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e.*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f.*) A is tried for a riot, and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

See ss. 34, 35, Penal Code.

Illustrations.

Reasonable grounds exist for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H, giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they were inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any facts in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*.) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that on that day A was at Lahore is relevant.

The fact that near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*.) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

(*a.*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence.

(*b.*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body, or bodily feeling, is in issue or relevant.

Explanation.—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

Illustrations.

(*a.*) A is accused of receiving stolen goods knowing them to be stolen It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(*c.*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d.*) The question is, whether A, the acceptor of a bill-of-exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e.*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f.*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g.*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h.*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i.*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j.*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k.*) The question is, whether A has been guilty of cruelty towards B his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(*l.*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m.*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(*n.*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(*o.*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(*p.*) A is tried for a crime.

The fact that the said something indicating an intention to commit the particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

The accused was charged with having received illegal gratifications from C and Co., on three specific occasions, in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as Commissariat contractors, and the accused was the manager of the Commissariat Office. *Held*, that evidence of similar, but unconnected instances of receiving illegal gratifications from C. and Co., in 1877 and 1878, was not admissible against him under ss. 5 to 13 of the Evidence Act.

Held per GARTH, C. J., and MACLEAN, J., the evidence was not admissible under s. 14.

Per MITTER, J.—"If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s 14, but they would not be relevant to establish the fact of payments in 1876."—I. L. R., 6 Calc., 655.

Section 14 seems to apply to that class of cases which is discussed in Taylor on Evidence, 6th Edition, ss. 318 to 322,—that is to say, cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; as for instance, in actions of slander or false imprisonment, or malicious prosecution, where malice is one of the main ingredients in the wrong which is charged, evidence is admissible to show that the defendant was actuated by spite or enmity against the plaintiff; or again, on a charge of uttering counterfeit coin, evidence is admissible to show that the prisoner knew the coin to be counterfeit, because he had other similar coin in his possession, or had passed such coin before or after the particular occasion which formed the subject of the charge.—*Per curiam*, I. L. R., 6 Calc., 659.

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a.*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b.*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A are relevant.

(*c.*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental,

The facts that soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a.*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

See note under s. 8, and I. L. R., 1 Bom., 610, as to accounts kept on behalf of an accused person being relevant as admissions.

Admission—by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

by suitor in representative character;

Statements made by—

(1.) Persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter;

(2.) Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by persons from whom interest derived.

are admissions if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability

Admissions by persons whose position must be proved as against party to suit.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admissions by persons expressly referred to by party to suit.

Illustration.

The question is, whether a horse sold by A to B is sound

A says to B—'Go and ask C, C knows all about it.' C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them

Proof of admissions against persons making them, and by or on their behalf.

or by his representative in interest, except in the following cases :—

(1.) An admission may be proved, by or on behalf of the person making it when it is of such a nature that, if the person making it, were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.

(*a.*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged ; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties if he were dead under section 32. clause (2).

(*c.*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section thirty-two, clause (2).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

Account books, though proved not to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm.—I. L. R., 1 Bom., 610.

When oral admissions as to contents of documents are relevant.

22. Oral admission as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

See s. 163, C. P. C.

Where a Police Inspector asked the prisoner's landlord to tell the prisoner to give out every thing honestly, as he would be made an approver, and the prisoner confessed,—*held*, that the confession was inadmissible.—I. L. R., 3 Bom., 12.

In the case of *Queen* v. *Nobodwip Goswami* (1 B. L. R., O. Cr., 22), PEACOCK, C. J., said: "For my own part I cannot see any objection to telling every man that he had better tell the truth, but that is very different from telling a man that he had better confess, when you do not know whether he is innocent or guilty. Though it has been held in some cases that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England, and I believe without a dissentient voice, that confessions obtained by artifice and deception are admissible. Therefore, where a confession was obtained by a person who took an oath

that he would never mention what the prisoner told him, the statement made, when disclosed, was held to be admissible. So where it appeared that one of the prisoners had made a statement to a constable whilst he was drunk, and it was imputed to the constable that he had given him liquor to cause him to do so, the statement was held to be admissible evidence against the prisoner, the statement not having been made under the inducement of hope or fear . . . . It is high time, I think, that we should decide according to principles which are founded on reason and good sense. I therefore hold that what the prisoner said in answer to questions put to him by the Police-officer was admissible, no threat or deception having been used, or any false hope held out."

The matter before a 'panchayat' was whether M and K had murdered B and thereby disqualified themselves from further intercourse with the rest of their brotherhood. M and K made certain statements before the panchayat, which it was afterwards sought to prove against them on their trial for the murder of B, as confessions corroborating the evidence of an approver. The witnesses called to prove these confessions did not state specifically what was said by M and K before the panchayat. One witness, a member of the panchayat, said: "M confessed and K acquiesced." Another witness, also a member of the panchayat, said: "M and K were taxed with taking B's house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the panchayat, and when M and K were threatened with excommunication from caste for life, that they made such statements. *Held*, that if the statements attributed to M and K had been actually made, and assented to, and this fact had been duly proved, the provision of s. 24 of Act I of 1872 could not be pleaded against their admissibility, on the ground that such statements had been caused by such threat from the members of the panchayat who were not in authority over M and K within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of M and K for the murder of B. The statements were in general terms, and represented only the impression conveyed to the mind of the witnesses by what might have been said. The Court should know as nearly as possible what were the words used by the supposed confessors, and what questions were put, &c. It might have been that the words ascribed to M and K, taken with the questions put and the exact subject-matter of the inquiry, did not amount to a confession of the guilt believed by the hearer to have been confessed.—I. L. R., 4 All., 46.

Confession to Police-officer not to be proved.

25. No confession made to a Police-officer, shall be proved as against a person accused of any offence.

Section 25 does not preclude one accused person from proving a confession made to a Police-officer by another accused person tried jointly with him.

Such a confession is not to be treated or received as evidence against the person making it, but simply as evidence on behalf of the other.—I. L. R., 2 Bom., 61.

A confession made to a Police-officer is inadmissible, except so far as is provided by s. 27. It is immaterial whether such Police-officer be the officer investigating the case—the fact that such person is a Police-officer invalidates the confession.—1 C. L. R., 21.

26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession by accused while in custody of Police not to be proved against him.

An admission made by an accused person under arrest to a Police-officer is admissible in evidence.—I. L. R., 6 Calc., 530; 10 B. L. R., App., 2, approved of. But see I. L. R., 6 Bom., 34.

The prisoner on his arrest made a statement in the nature of a confession, which was reduced into writing by one of the Inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the Police Office, the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace. The statement was admitted by the Judge, who overruled an objection on behalf of the prisoner that, under s. 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate-General under cl. 26 of the Letters Patent, *held*, that the confession was, under s. 25 of the Evidence Act, not admissible in evidence.

Per GARTH, C. J.—Section 26 of the Evidence Act is not to be read qualifying the plain meaning of s. 25. In construing s. 25, the term 'Police-officer' is not to be read in a technical sense, but in its more comprehensive and popular meaning.—I. L. R., 1 Calc., 207.

In this case the confession was taken at the Police Office. It was therefore held that Mr. Lambert's character of Police-officer predominated: and that the very place where he sat had its terrors for accused persons. Persons connected with the Police are not debarred from taking confession. PONTIFEX, J., remarked: "Without going so far as to say that s. 25 of the Evidence Act renders inadmissible a confession made to any person connected with the Police (for there are cases in which a person holding high judicial office has control over and is the nominal head of the Police in his district), I think that, in the present case, it was impossible for Mr. Lambert, residing in the house allotted to him as Deputy Commissioner of Police, and surrounded by police immediately under his control, to divest himself of his character of a Police-officer."—I. L. R., 1 Calc., 207.

A statement made to a Police-officer by an accused person while in the custody of the Police, although intended to be made in self-exculpation and not as a confession, may be nevertheless an admission of a criminating circumstance; and if so, under ss. 25 and 26 of the Evidence Act it cannot be proved against the accused.—I. L. R., 6 Bom., 34.

A Village Munsif in the Madras Presidency is a Magistrate within the meaning of this section. The word 'include' in cl. 13 and other clauses of s. 1 of Act I of 1868 is intended to be enumerative, not exhaustive.—I. L. R., 2 Mad., 5.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police-officer, so much of such information,

How much of information received from accused, may be proved.

whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The accused made a confession to a Police Inspector, part of which related to the concealment of certain jewels, and in consequence of the information so received, the jewels were discovered. *Held* that, under s. 27 of the Evidence Act, that part of the confession of the accused which described his assault on the deceased, and her consequent death and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments, and might be proved against the accused.—19 W. R., Cr., 51.

B and R, accused under s. 414, Penal Code, gave information to the Police which led to the discovery of the stolen property. This information was to the effect that accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held*, by Allahabad Full Bench, that s. 27 of the Evidence Act, is a proviso not only to s. 26 but also to s. 25; and that, therefore, so much of the information given by the accused to the Police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved.—I. L. R., 6 All., 509. This is clear from the proviso to s. 162, C. P. C.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said,—'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—'A and I murdered C.' This statement may not be taken into consideration by the Court against A as B is not being jointly tried.

Under s. 30 of the Evidence Act the confession of a prisoner affecting himself and another person charged with the same offence is, when duly proved, admissible as evidence against both, but such second person cannot, when it is uncorroborated as against him, be legally convicted on it. The word 'Court' in s. 30 means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury.—I. L. R., 1 Mad., 163 ; I. L. R., 4 Calc., 483 ; I. L. R., 1 All., 664.

The words "may take into consideration" mean "may use as evidence." See definition of 'proved,' s. 3 *supra, per* JACKSON, J.—A confession is an admission, and ordinarily admissions can only be proved against the person making them, but the 30th section expressly says, that such confession when proved may be considered as against other persons being jointly tried for the same offence who are affected by it.

To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used.—10 B. L. R., 453; 19 W. R., Cr., 67 ; I. L. R., 6 Calc., 279.

Section 30 ought to be construed strictly, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial.—19 W. R., Cr., 57 ; I. L. R., 7 Mad., 579.

A and B were committed, A for dacoity under s. 395, Penal Code, and B under s. 412 for receiving stolen property. *Held* that A's confession, in which he said he had given B some pieces of gold and silver stolen at the dacoity, was inadmissible against B, as they were not being tried jointly for the same offence.—I. L. R., 5 Bom., 63. The ruling in *Reg.* v. *Amrita Govinda*, 10 Bom. H. C. Rep., 497, was referred to and approved.

The statement must be 'proved' against whom it is intended to use it, that is, it should be made in their presence, or, if not made in their presence, should be read over to them.—I. L. R., 6 Bom., 124, following I. L. R., 7 Calc., 65. Confessions of two of several accused persons made in the absence of the others are of no weight as against the latter —I. L. R., 10 Calc., 970.

Where the only evidence against the prisoner was the confession of a fellow-prisoner coupled with the fact that he pointed out the stolen property *some months after* commission of the offence, held that the latter fact, being in itself ambiguous, and not inconsistent with the theory of innocence, was not a sufficient corroboration of the confession to justify a conviction. The confession of a fellow-prisoner is not entitled to so much consideration as the testimony of an accomplice examined on oath and subject to cross-examination.—I. L. R., 10 Bom., 231. In this case the confession was not corroborated by any independent evidence to show that the appellant was actually one of the house-breakers. See also 23 W. R., Cr., 24.

The direction in s. 30 has been whittled away to such an extent that

the words of the Legislature might as well be "The Court shall *not* take into consideration." Regard being had to the common course of human conduct, it is only natural that a confessing prisoner should seek to throw the larger share of the blame on the other prisoner implicated. But this should not prevent the confession from affecting a co-prisoner provided it implicates himself to *such an extent that he can be convicted for the offence.* The rulings that he must implicate himself to the same extent as the person against whom the confession is to be used add something to the law which is not in it. These rulings cannot be sound, as it may well happen that the confessing prisoner *may really be less to blame than the other.* He may have been persuaded by the other, or he may have stood outside a house to give warning while others were actually committing a theft or a robbery. This view has been fully recognized by that able Judge, West, J.—(I. L. R., 8 Bom., 228). In this case A and B were tried together under s. 239, P. C. A confessed that he had got the coins from B, and had passed them to several persons at his request. *Held*, that the confession of A was relevant against B. "When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through *acts separable from those ascribed to his accomplice, and capable, therefore of constituting a separate offence from that of his accomplice.* Compare I. L. R., 6 Bom., 283. Five persons may be engaged in a riot (the same offence), and yet one of them may well be less guilty than the others. Here, then, are contradictory rulings. That of the Bombay High Court appears to be in accordance with the law, while some of the Calcutta rulings above quoted make new law. It is very desirable that in cases such as these the Legislature should step in to maintain and declare its intention. It is very necessary also that the executive Government should have some means of compelling Full Bench rulings, when Divisional Bench rulings differ.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following case:—

When it relates to cause of death;

(1.) When the statement is made by a person, as to the cause of his death, or as to any of the circumstances of the transaction

which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Signs were admitted as statements under this section, when they were made by the deceased shortly before her death in answer to questions put regarding her injuries.—I. L. R., 7 All., 385.

When any person, whose evidence is essential to the conviction of a prisoner charged with the commission of a crime, may be in imminent danger of dying before the case comes to trial, the deposition of the dying person should, if possible, be recorded in the presence of the accused or of attesting witnesses, and, in the event of his death, submitted at the trial with evidence of this fact.—C. O. No. 47 of 31st July, 1857.

A statement made by a dying person as to the cause of his death, and recorded by a Magistrate, cannot be treated as a deposition, unless made in the presence of the accused before the Magistrate exercising judicial jurisdiction, but must be proved in the ordinary way by a person who heard it made.—10 C. L. R., 11.

Where the accused was charged with culpable homicide not amounting to murder, the question was whether the deceased had died from the effects of a beating. *Held*, that a statement by the deceased that he had been beaten by the accused was admissible in evidence under s. 32, without proof that at the time of making the statement the deceased was conscious of any fatal effect of such beating.—6 C. L. R., 278.

or is made in course of business;

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom or matters of general interest;

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage, or adoption, the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6.) When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons deceased, and is made in any will or deed relating to the affair of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(7.) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons, and expresses feeling relevant to matter in question.

(8.) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*.) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by B as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b.*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(*c.*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned in Calcutta for the purpose of conferring with him upon specified business, is a relevant fact.

(*d.*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e.*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f.*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g.*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day, is relevant.

(*h.*) The question is, what was the cause of the wreck of a ship?

A protest made by the captain, whose attendance cannot be procured is a relevant fact.

(*i.*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j.*) The question is, what was the price of grain on a certain day in a particular market?

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k.*) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact

(*l.*) The question is, what was the date of the birth of A?

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m.*) The question is, whether, and when, A and B were married.

An entry in a memorandum book by C, the deceased father of B, of the daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts

which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

Provided:

that the proceeding was between the same parties or their representative in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

See s. 512. C. P. C.

"In a judicial proceeding." See s. 189, C P. C. Where the former statement has been taken *coram non judice*, it is not admissible.—I. L. R., 3 Mad., 48. Where the statement offered under this section had been legally taken by the British Consul at Zanzibar, but there were no means of enforcing his attendance before the High Court, the statement was held to be admissible.—I. L R., 3 Bom., 334.

In the proceedings before a Magistrate on a charge of causing grievous hurt, two (among other) witnesses, one of whom was the person assaulted, were examined on behalf of the prosecution. The prisoners were committed for trial. Subsequently the person assaulted died in consequence of the injuries inflicted on him. At the trial before the Sessions Judge, charges of murder and of culpable homicide were added to the charge of grievous hurt. The deposition of the deceased witness was put in and read at the Sessions trial *Held*, that the evidence was admissible under s. 32, cl 1, or s. 33, of the Evidence Act, notwithstanding the additional charges before the Sessions Court. The question whether the proviso to s. 33 of the Evidence Act is applicable,—that is, whether the questions at issue are substantially the same,—depends upon whether the same evidence is applicable, although different consequences may follow from the same act.

At the trial it was proved that the other witness who had been examined before the Magistrate had disappeared, and that it had been found impossible to serve him with a summons. His deposition was put in and read. *Held*, that it was properly admitted under s. 33.—I. L. R., 7 Calc., 42; 8 C. L. R., 273. See also I. L. R., 3 Mad., 48.

The words "incapable of giving evidence" in s. 33 denote an incapacity of a permanent, not of a temporary, kind; and where a witness is proved to be incapable of giving evidence, the Court has no discretion as to admitting his deposition.—4 C. L. R., 504. But a stronger bench have since ruled just the contrary.—I. L. R., 6 Calc., 774.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

Account books, containing entries not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated, if regularly kept in the ordinary course of business, are admissible as evidence under s. 34, and *semble* under s. 32, cl. 2.—I. L. R., 1 Bom., 610.

Relevancy of entry in public record, made in performance of duty.

35. An entry in the public or other official book, register, or record, stating a fact in issue or relevant facts and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

This section does not make the public book evidence to show that a particular entry has not been made in it.—7 C. L. R., 356.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature, contained in certain Acts or Notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the Gazette of any Local Government, or

in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

Relevancy of statements as to any law contained in law books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

A well-known treatise, such as Taylor's Medical Jurisprudence, may be referred to in the course of trial.—12 C. L. R., 86; I. L. R., 10 Cal., 140.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation, or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Relevancy of certain judgments in probate, &c., jurisdiction.

41. A final judgment, order to decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any

specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof

that any legal character which it confers accrued, at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order to decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which B alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, &c., other than those mentioned in sections 40 to 42 when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustration.

(*a*.) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c.*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d.*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held*, that the decision of the Criminal Court did not operate under s. 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter.—I. L. R., 4 All., 97. If the father had sued first in the Civil Court and got a decree, the abduction would have to be independently proved in the Criminal Court.

"Or is relevant under some other provisions of the Act." It had been held on several cases that previous judgments are relevant as 'facts' within the meaning of s. 11, or as 'transactions' within the meaning of s. 13. But it has been held by a Full Bench of the Calcutta High Court that they are not so relevant.—6 C. L. R., 439. MITTER, J., was the only dissentient member. The Full Bench held that if judgments were relevant under ss. 11 or 13, ss. 40 to 43 would be surplusage. JACKSON, J., said: "It seems to me clear that the right spoken of in s. 13 is something quite distinct from ownership. How can it properly be said, when the question between the plaintiff and respondent is, which of them is entitled to a thing that the question relates to the *existence of a right?* That some one has a right to the property is undoubted. The question is to whom it belongs? Section 13 refers to incorporeal rights." GARTH, C. J., said: "I consider that an adjudication or opinion expressed in a judgment is not, properly speaking, 'a fact,' and certainly not a fact within the meaning of s. 11. The delivery or the existence of a judgment itself may be a fact, but the decision which the judgment contains is no more a fact than an opinion expressed by any other person who is not exercising judicial functions, such as an opinion given by the legal member of Council, in answer to a question by the Government."

Where a Munsif had directed a prosecution for forgery by adding signatures to a bond, and his judgment was admitted in evidence by the Magistrate, and referred to by the Judge in his charge to the jury,—*held*, that the judgment of the Munsif was inadmissible in evidence.—7 C. L. R., 74.

Bombay rulings as to relevancy of judgments differ from the Calcutta Full Bench ruling. Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent, although they are not conclusive under the Indian Evidence Act as they were before

that Act came into operation, are yet admissible in evidence under s. 13 of the Act, even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent.—I. L. R., 3 Bom., 3.

In the case of *Niamat Ali* v. *Guru Dass* (22 W. R., 365), COUCH, C. J., referring to s. 13, said: "The word 'transaction' is certainly large enough to allow the proceedings in such suits as these to be admitted as evidence, not as conclusive, but as of such weight as the Court may think they ought to have: and in this section there is not the limit that the suit must be between the same parties as the one in which the judgment or decree in it is sought to be used. Of course, the value of it will be very different where it was given in a suit to which the person against whom it is used was not a party, and had no opportunity of contesting the matter, and where he was party to the suit, and had the opportunity of producing any evidence he might think fit. Unless the Indian Evidence Act has excluded judgments and decrees which had previously been considered as very good evidence, and which are, indeed, in many cases almost, if not quite, conclusive, it is clear that the decisions referred to were admissible in this case."—I. L. R., 3 Bom., 5.

Fraud or collusion in obtaining judgment, or incompetency of Court may be proved.

44. Any party to a suit or order proceeding may show that any judgment, order or decree which is relevant under sections 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, *or in questions as to* identity of handwriting, are relevant facts.

Such persons are called experts.

Illustrations.

(*a*.) The question is, whether the death of A was caused by poison The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon a question, whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the

nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c.*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question, whether the documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, which such opinions are relevant.

Illustrations.

(*a.*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at or about the same time, is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the persons by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question, whether the letter is in the handwriting of A, are relevant, though neither B, C nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression 'general custom or right' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Speaking of the *wajib-ul-arz* (record-of-rights) their Lordships of the Privy Council said in the case of *Lekhraj Kovar* v. *Mahipal Singh*:—

The Indian Evidence Act has repealed all rules of evidence not contained in any Statute or Regulation, and the plaintiff must, therefore, show that these papers are admissible under some provision of the Indian Evidence Act. The 35th section may be read as follows: "An entry in any official record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, is itself a relevant fact." There can be no doubt that the entries in question, supposing them to bear the construction already given to them, state a relevant fact, if not the very fact in issue, *viz.*, the usage of the Bahrulia clan. If so, then the entry having stated that relevant fact, the entry itself becomes by force of the section a relevant fact,—that is to say, it may be given in evidence as a relevant fact, because, being made by a public officer, it contains anentry of a fact which is relevant.

Again, if these papers are not to be treated as records themselves describing the custom, but as recording only the opinions of persons likely to know it, the 48th section would appear, in that view of the entries, to make them admissible. The 48th section is, &c. Then if opinions of this nature were relevant, the entry of such opinions in an official record is itself a relevant fact which makes the entry admissible. There may be doubt whether what for the present purpose are assumed to be opinions would fall under s. 48 or s. 49, which refers to family usages. (See N. W. P. High Court Reports, p. 397.)

The daughter objects that as she was no party to the making up of the papers, she is not bound by the statements in them. She is, no doubt, not concluded by them. They do not estop her from asserting her right or disputing the custom which is stated in them. They are only received as evidence, and are open to be answered, and the statements in them may be rebutted.—6 C. L. R, 593. The tendency of Civil Courts now-a-days is to reject all evidence of custom or general right. The above rulings are important and authoritative.

Opinions as to usages, tenets, &c., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people;

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

50. When the Court has to form an opinion as to the relationship of the person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code.

Illustrations.

(*a.*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b.*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

In prosecutions under ss. 494, 497, 498, Penal Code, the fact of the marriage must be strictly proved.—I. L. R., 5 Calc, 566.

Grounds of opinion when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases, character to prove conduct imputed irrelevant.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.

54. In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been

given that he has a good character, in which case it becomes relevant.

Explanation.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. *Held*, that this amounted to a misdirection, for though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible.

Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.—I. L. R., 5 Calc., 768. Where the previous conviction renders the commission of the offence in issue probable, evidence of it may be admitted. For instance, a previous conviction for theft would be very relevant in a prosecution for receiving stolen property, for the purpose of showing guilty knowledge. A previous conviction under s. 411, P. C. would be relevant in a prosecution under s. 413, *id.*

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word 'character' includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(1.) All laws or rules having the force of law now or

heretofore in force or hereafter to be in force in any part of British India.

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed.

(3.) Articles of War for Her Majesty's Army or Navy.

(4.) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto.

Explanation.—The word 'Parliament,' in clauses (2) and (4), includes—

(1.) The Parliament of the United Kingdom of Great Britain and Ireland;
(2.) The Parliament of Great Britain;
(3.) The Parliament of England;
(4.) The Parliament of Scotland, and
(5.) The Parliament of Ireland.

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

(6.) All seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction, and of Notaries public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India.

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official Gazette of any Local Government.

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown.

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official Gazette.

(10.) The territories under the dominion of the British Crown.

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons.

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctor, vakils, pleaders and other persons authorized by law to appear or act before it.

(13.) The rule of the road on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted, need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any

other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable;

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained.

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.

(3.) Copies made from or compared with the original.

(4.) Counterparts of documents as against the parties who did not execute them.

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a.*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b.*) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(*c.*) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d.*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents, of a document in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power,

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section sixty-six, such person does not produce it;

(*b*.) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*.) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*.) When the original is of such a nature as not to be easily moveable;

(*e*.) When the original is a public document within the meaning of section seventy-four;

(*f*.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g*.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section sixty-five, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the

following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing, or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—

(i) of the Sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be,

and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1.) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3.) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4.) The Acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority or commonly received in that country as such, or by a copy certified under the seal of the country or Sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal

keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence given by a witness in a judicial proceeding, or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements, as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement, or confession was duly taken.

See s. 533, C. P. C.

Presumption as to Gazettes, Newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Courts shall presume that every document purporting to be a power-of-attorney and to have been executed before

and authenticated by a Notary Public or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps, and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

89. The Court shall presume that every document called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's

handwriting, and in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section eighty-one.

Illustrations.

(*a.*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it The custody is proper.

(*b.*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c.*) A, a connection of B, produces deeds relating to land in B's possession, which were deposited with him by B for safe custody. The custody is proper.

A Court is not bound to accept as genuine the signature on a document upwards of thirty years old, even though it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document.—I. L. R., 6 Calc., 209.

If a document be shown to have been lost in proper custody and to be more than thirty years old, secondary evidence of its contents may be given under s. 65, cl. (*c*), and s. 90 of this Act.—6 C. L. R., 199.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any

particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India may be proved by the Probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or disposition of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a.*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b.*) If a contract is contained in a bill-of-exchange, the bill-of-exchange must be proved.

(*c.*) If a bill-of-exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) A gives C a receipt for money paid by B.

Oral evidence is offered of the payment. The evidence is admissible.

See s. 533, C. P. C.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express term of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a.*) A policy of insurance is effected on goods 'in ships from Calcutta to London.' The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, cannot be proved.

(*c.*) An estate called 'the Rampore tea estate' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e.*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f.*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the

price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(*h.*) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i.*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount A may prove this.

(*j.*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given or facts which would show its meaning or supply its defects.

Illustrations.

(*a.*) A agrees in writing to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.' Evidence cannot be given to show which price was to be given.

(*b.*) A deed contain blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply such facts.

Illustration.

A sells to B by deed 'my estate at Rampore containing 100 bigas.' A has an estate at Rampore containing 100 bigas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B by deed 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a.*) A agrees to sell to B for Rs. 1,000 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b.*) A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether Hyderabad in the Deccan or Hyderabad in Scind was meant.

Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show which of the two it was meant to apply.

Illustration.

A agrees to sell to B 'my land at X' in the occupation of Y. A has and at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, &c.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C if it affected his interests.

Saving of provisions of Indian Succession Act relating to Wills.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of Wills.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts and which B denies to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b.*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side. A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(*a.*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b.*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the fact.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

In prosecutions for defamation, the burden of proving good faith is on the accused (I. L. R., 4 Calc., 124). Section 27 of Act XVIII of 1862 does not apply to Mofussil Courts. nor, apparently, to Presidency-towns either.

An answer, setting up the right of private defence, must be supported by evidence. giving a full and true account of the transaction from which the charge against an accused person arises. No accused person can at the same time deny committing an act and justify it. The law does not admit of justification by putting forward hypothetical cases; it must be by proof of the actual facts.—1 C. L. R., 62.

This ruling appears somewhat hard on accused persons, who are thereby deprived of a right which every defendant in a civil suit enjoys. But no doubt the ruling tends to prevent frivolous defences. and the Judges in England do not permit Counsel to put forward hypothetical defences unsupported by the evidence.

Burden of proving fact especially within knowledge.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him,

Illustrations.

(*a*.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a.*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b.*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction on the father.

Birth during marriage, conclusive proof of ligitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a.*) That a man who is in possession of stolen goods soon after the theft is either the chief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b.*) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(*c.*) That a bill-of-exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(*d.*) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(*e.*) That judicial and official acts have been regularly performed ;

(*f.*) That the common course of business has been followed in particular cases ;

(*g.*) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(*h.*) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(*i.*) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before them :—

As to illustration (*a*)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (*b*)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

As to illustration (*c*)—A, the drawer of a bill-of-exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances.

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter to relation to which it is asked :

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

With regard to ill. (*b*), the effect of High Court rulings is that the Court *shall* presume an accomplice to be unworthy of credit, unless corroborated in material particulars.

CHAPTER VIII.

ESTOPPEL.

Estopped.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant and of licensee of person in possession.

116. No tenant of immoveable property, or person, claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property, and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill-of-exchange, bailee or licensee.

117. No acceptor of a bill-of-exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1).—The acceptor of a bill-of-exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suits and their wives or husbands Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a.*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a Superior Court.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the Superior Court.

(*c*.) A is accused before the Court of Session of attempting to murder a Police Officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

The District Munsif of Vizagapatam gave sanction for a prosecution for giving false evidence, and the Sub-Magistrate summoned the Munsif to appear and give evidence at the preliminary inquiry. Held, that the Munsif was exempt from appearance. See remarks of PATTESON, J., in *Regina* v. *Gazard* (8 C. & P., 595)—6 Mad. H. C., Ap., 42.

A Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate. The privilege given by this section is the privilege of the witness, *i.e.*, of the Judge or Magistrate of whom the question is asked: if he waives such privilege or does not object to answer such questions, it does not lie in the mouth of any other person to assert the privilege. —I. L. R., 3 All., 573.

Communications during marriage.

122. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that public interests would suffer by the disclosure.

A report by a Divisional Officer, under s. 176 of the Criminal Procedure Code, to the Magistrate of the District, is confidential. The High Court have no power to call for such a report, as it is no part of a judicial proceeding. See s. 435, Criminal Procedure Code; I. L. R., 3 Calc., 742.

Information as to commission of offences.

125. No Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence.

Professional communications.

126. No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal purpose;

(2) Any fact observed by any barrister, pleader, attorney or vakil in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*.) A, a client, says to B, an attorney—'I have committed forgery and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*.) A, a client, says to B, an attorney—'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*.) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

There is no privilege as to communications between mukhtars and their clients, the word 'attorney' being confined to attorneys of the High Court.—10 W. R., Cr., 14.

To be privileged under this section, a communication by a party to his attorney must be of a confidential or private nature.—I. L. R., 3 Bom., 91.

127. The provisions one hundred and twenty-six shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Section 126, to apply to interpreters, &c.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section one hundred and twenty-six; and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of title-deeds of witness not a party.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Production of documents which another person, having possession, could refuse to produce.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to

Witness not excused from answering on ground that answer will criminate.

such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind:

Proviso.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Although a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of facts for fear of penal consequences. Although without such a warning he may make a false denial, and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment.—2 C. L. R., 181.

Accomplice.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

But the evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require.—5 W. R., Cr., 80.

The rule in s. 114 (*b*) coincides with the rule observed in England, that although the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal.—I. L. R., 1 Mad., 394.

Confessions of prisoners are not, as against their fellow-prisoners who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. 11 Bom. H. C., 196; I. L. R., 1 Bom., 475; 19 W. R., Cr., 57; and I. L. R., 10 Calc., 970. A prisoner under trial has the advantage of cross-examining an approver, whereas the statement of a fellow-prisoner, which would be as much tainted as that of an approver, would be subject to no such test. See 23 W. R., Cr., 24.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

A conviction upon the statement of a complainant is lawful.—22 W. R., Cr., 32.

A Magistrate is fully justified in believing one witness in preference to three others, if he sees reason to do so, and it is not legally necessary that he should detail his reasons.—24 W. R., Cr., 18. But a judgment must contain the reasons for the decision.—S. 367, C. P. C.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to Civil and Criminal Procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party purposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section thirty-two.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b.*) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(*c.*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts

(B, C and D) which must be shown to exist before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examination. Direction of re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

See note under s. 165, *infra*.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

(1) to test his veracity;

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness' character and the importance of his evidence.

(4.) The Court may, if it sees fit, draw from the witness' refusal to answer the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section one hundred and forty-eight ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a.*) A barrister is instructed by an attorney or vakil that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(*b.*) A pleader is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(*c*.) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(*d*.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

As to procedure in charges against pleaders or mukhtars of unprofessional or improper conduct, *see* Act XVIII, 1879, ss. 12 to 15. See also s. 10, Letters Patent, 1865.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

BENGAL SECRETARIAT

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b.*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases, the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

(*a.*) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) A is indicated for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section thirty-two or thirty-three, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon after-

wards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he new it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh memory by reference to professional treatises.

(See notes under s. 172, C. P. C.)

Testimony to facts stated in document mentioned in section 59.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section one-hundred and forty-nine, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books are correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question; but if he then neglects to exercise his right, he cannot continue to retain the right throughout the whole of the subsequent examination of the witness.—I. L. R., 8 Calc., 149.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and if the interpreter disobeys such direction, he shall be held to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Giving as evidence of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using as evidence of document, production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections one hundred and twenty-one to one hundred and thirty-one,

both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under sections one hundred and forty-eight or one hundred and forty-nine; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

See s. 540, C. P. C.

The Court ought not to refuse to allow the cross-examination of a witness called by it.—I. L. R., 5 Calc., 614; 5 C. L. R., 364.

The Judges in this case allude to the "ordinary practice in properly constituted Courts." They do not go so far as to lay it down that a witness not called for the Crown must be placed in the witness-box for examination The prosecution may abandon a witness as hostile or because he has been gained over. Moreover, in a preliminary inquiry a Magistrate often examines, under s. 192 (now 540), Criminal Procedure Code, many persons who are not really witnesses for the prosecution, and who may be favourable to the defence. If the Crown does not call such persons, the accused should call them as his own witnesses. It would be absurd to hold that he may cross-examine witnesses who are favourable to him. All that the ruling positively lays down is, that "if a Judge thinks it necessary to call such a witness for the purpose of eliciting some facts which he thinks *material for the prosecution*, the prisoner ought to be allowed to cross-examine."

Under this section a Judge has the power of asking irrelevant questions, if he does so in order to obtain proof of relevant facts; but if he does so with a view to criminal proceedings being taken against the witness, the witness is not bound to answer them, and cannot be punished for not answering under s. 179, Penal Code.—I. L. R., 10 Bom., 185.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court, before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the

rejected evidence had been received, it ought not to have varied the decision.

This section applies to criminal as well as civil cases.—I. L. R., 1 Calc., 207. See also I. L. R., 2 Bom., 61.

SCHEDULE.

Number and year.	Extent of Repeal.
Stat. 26, Geo. III., c. 57.	Section thirty-eight so far as it relates to Court of Justice in the East Indies.
Stat. 14 & 15 Vic., c. 99.	Section eleven and so much of section nineteen as relates to British India.
Act XV of 1852...	So much as has not been heretofore repealed.
Act XIX of 1853	Section nineteen.
Act II of 1855 ...	So much as has not been heretofore repealed.
Act XXV of 1868	Section two-hundred and thirty-seven.
Act I of 1868 ...	Sections seven and eight.

THE

PROTECTION OF JUDICIAL OFFICERS ACT.

ACT NO. XVIII OF 1850.

An Act for the Protection of Judicial Officers.

Preamble.

FOR the greater protection of Magistrates and others acting judicially; It is enacted as follows :—

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

1. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of: and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

See s 197, C. P. C., and I. L. R., 1 All., 280 thereunder quoted. See also 1 Tayl. and Bell, 228; 3 Bom. A. C., 46, 47; 6 Mad., 439; 4 B. L. R., A. C., 37. See also Act V, 1861, s. 43, and ss. 77, 78, Penal Code.

STATE PRISONERS.

ACT NO. XXXIV OF 1850.

This is an Act to provide for the better custody of State prisoners confined under Reg. III, 1818, of the Bengal Code. It applies to the whole of British India except the Scheduled Districts.

See Act V, 1871, s. 15. See also *in re Amir Khan*, 6 B. L. R., 392.

THE PENAL SERVITUDE ACT.

ACT NO. XXIV OF 1855.

An Act to substitute penal servitude for the Punishment of Transportation in respect of European and American Convicts, and to amend the Law relating to the removal of such Convicts.

Preamble.

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation, and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment; It is enacted as follows:—

No European or American to be sentenced to transportation.

I. After the commencement of this Act, no European or American shall be liable to be sentenced or ordered, by any Court within the territories under the Government of the East India Company, to be transported.

Terms of penal servitude instead of the present terms of transportation.

II. Any person who, but for the passing of this Act, would, by any law now in force or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life. And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

Discretion of Courts as to alternative punishments not to be affected.

III. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

Effect of pardon granted upon condition of penal servitude.

IV. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

Secs. V—XII repealed.

Act not to affect the provisions of certain English Statutes.

XIII. Nothing in this Act is intended to alter or affect the provisions of the 12 and 13 Victoria, Chapter 43, or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

12 and 13 Vic., c. 43, is an Act for punishing mutiny and desertion of officers and soldiers of the East India Company, &c. Repealed by 20 and 21 Vic., c. 66.

What to be deemed proof that a person is a European or an American.

XIV. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Construction of Act.

XV. The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

Commencement of Act.

XVI. This Act shall commence from and after the first day of November 1855.

THE STATE OFFENCES ACT.

ACT NO. XI OF 1857.

An Act for the prevention, trial, and punishment of offences against the State.

Preamble.

WHEREAS it is necessary to make due provision for the prevention, trial, and punishment of offences against the State; It is enacted as follows:—

I & II repealed by Act No. XVII of 1862.

Executive Government may issue a Commission for the trial of persons charged with certain offences in any proclaimed District.

III. *Clause* 1.—Whenever the Executive Government of any Presidency or place within the said territories shall proclaim that any District subject to its Government is or has been in a state of rebellion, it shall be lawful for such Government to issue a Commission for the trial of all persons who shall be charged with having committed within such District, after a day to be specified in the Commission, any of the crimes mentioned in the preceding sections, or any other crime against the

State, or murder, arson, robbery, or other heinous crime against person or property.

"State of rebellion," that is, a disturbed district, "in which any great interval between conviction and punishment must deprive the punishment of its due effect." Mr. Peacock's Statement of Objects and Reasons.

Court may be held in any part of the District.

Clause 2.—The Commissioner or Commissioners authorized by any such Commission may hold a Court in any part of the said District mentioned in the Commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act, that the District mentioned in the Commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one District.

Government may vest certain powers in the Court.

IV. It shall be lawful for the Executive Government by such Commission, to direct that any Court held under the Commission shall have power, without the attendance or futwa of a Law Officer, or the assistance of Assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such Court shall be final and conclusive; and that the said Court shall not be subordinate to the Sudder Court.

Magistrate may commit persons for trial before a Court held under this Act.

V. If a Commission be issued under the authority of this Act, any Magistrate within the District which is described in the Commission may commit persons charged with any of the aforesaid crimes within such District for trial before a Court to be held under this Act.

Act not to apply to British-born subjects or their children.

VI. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects.

Government may issue proclamation prohibiting the carrying or possession of arms in any District.

VII. Whenever the Executive Government shall deem it necessary for the public safety, it shall be lawful for such Government to declare, by proclamation, that from and after a day to be named therein it shall not be lawful for any person

or for any specified class of persons, to carry or have in their possession any arms or instruments used for warlike purposes, or any specified description of arms or instruments aforesaid within any District mentioned in the proclamation.

Penalty for unlawful possession of arms, &c.

VIII. After the day named in the proclamation, whoever shall carry, or have in his possession, any arms or other such instrument as aforesaid contrary to the proclamation, shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment for a period not exceeding six months; and the arms or other such instrument as aforesaid, shall be confiscated.

Magistrate empowered to search houses, &c., and to seize arms.

IX. It shall be lawful for a Magistrate, by warrant, to cause search to be made in any house or other place in which there may be reasonable grounds for suspecting that any arms or other such instrument as aforesaid, kept contrary to the proclamation, may be found; and any such arms or instrument may be seized and confiscated.

Government may grant exemption to certain persons.

X. Nothing in Sections VII, VIII, and IX of this Act shall extend to any person who may be exempted by the authority of the Executive Government from the prohibition contained in such proclamation.

Interpretation.

XI. The word "Magistrate" in this Act shall include any person lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

THE STATE PRISONERS ACT.

ACT NO. III OF 1858.

THIS is an Act to amend the law relating to the arrest and detention of State Prisoners confined under Regulation II, 1819, of the Madras Code, or Regulation XXV, 1827, of the Bombay Code.

See 6 B. L. R., 450.

POLICE ACT.

ACT V OF 1861, AS AMENDED BY ACT X OF 1882.

An Act for the Regulation of Police.

Preamble.

WHEREAS it is expedient to reorganize the Police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation.

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

Magistrate of the District.

The words 'Magistrate of the District' shall mean the Chief Officer charged with the executive administration of a District and exercising the powers of a Magistrate, by whatever designation the Chief Officer charged with such executive administration is styled.

Magistrate.

The word 'Magistrate' shall include all persons within the General Police District, exercising all or any of the powers of a Magistrate.

Police.

The word 'Police' shall include all persons who shall be enrolled under this Act.

General Police District.

The words 'General Police District' shall embrace any Presidency, Province, or place or any part of any Presidency, Province, or place in which this Act shall be ordered to take effect.

Property.

The word 'property' shall include any moveable property, money, or valuable security.

Number.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Gender.

Words importing the masculine gender shall include females.

Person.

The word 'person' shall include a Company or Corporation.

Month.

The word 'month' shall mean a calendar month.

Cattle.

The word 'cattle' shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.

Constitution of the Force.

2. The entire Police establishment under Local Government shall, for the purposes of this Act, be deemed to be one Police Force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall, from time to time, be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

Repealed, so far as it relates to Provinces under the control of the Lieutenant-Governor of Bengal—Act VII of 1869, B. C.

Superintendence in the Local Government.

3. The superintendence of the Police throughout a General Police District shall vest in and, subject to the general control of the Governor-General of India in Council, shall be exercised by the Local Government to which such District is subordinate: and except as authorized under the provisions of this Act, no person, officer, or Court shall be empowered by the Local Government to appoint, supersede, or control any Police Functionary.

Inspector-General of Police, &c.

4. The administration of the Police throughout a General Police District shall be vested in an Officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General, as to the Local Government shall seem fit. The administration of the Police throughout the local jurisdiction of the Magistrate of the District shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary. The Inspector-General and other Officers abovementioned

shall, from time to time, be appointed by the Local Government, and may be removed by the same authority.

As to the subordination of the District Superintendent to the District Magistrate, see Bengal Resolution of 22nd September 1862. The District Magistrate has no authority to interfere in the internal organization and discipline of the Police Force, but in other respects his position in relation to the Police is unchanged. The District Superintendent is, in fact, an aid to the Magistrate for the superintendence of the Police of the District. The Commissioners of Divisions will continue to exercise the same supervision over the Magistrates in respect to the administration of Police and criminal justice which they have hitherto exercised as Superintendents of Police, but they will not in any way interfere with the details of the organization of the Police. Commissioners of Divisions must bear in mind that they are responsible, as heretofore, for the entire executive administration of their divisions. The District Superintendent is the head of the Police Force employed in the District. He is, therefore, responsible to the Magistrate for the efficient performance of the duties devolving upon the force. It is his duty to see that all orders of the Magistrate or other competent authority are promptly and correctly carried out. Should any difference of opinion on any question relating to Police administration arise between the District Superintendent and the Magistrate of the District, it is the duty of the former to carry out the Magistrate's instructions, and to request the Magistrate to refer the point under dispute for the orders of the Commissioner, who will decide all such references, communicating, when necessary, with the Inspector or Deputy Inspector-General. Any Officer of the Police, who is dissatisfied with the decision of the Commissioner, may submit his case to the Inspector-General. Circular No. 7 of 1864 also contains some orders on this subject, in continuation and modification of Circular No. 3 of 29th January 1864. "The Inspector-General deems it hardly necessary again to remind District Superintendents that the Magistrate is entirely responsible for the peace of his district, and that they (the District Superintendents) are his assistants for Police duties, and as such are *bound to carry out all his orders*. They are *by law* independent of him only as far as regards the internal economy of the force, and everything of a purely departmental nature, *but even in such matters they are expected to pay due regard to his wishes and suggestions*. The foregoing is the only way of reconciling their several duties, and it will be found effectual whenever officers are above personal antagonism and exercise a judicious control over their subordinates. The Inspector-General strongly deprecates petty references, and he will take serious notice of the conduct of any officer who offers a fractious opposition to the instructions and orders of the Magistrate. Should doubt arise between the District Superintendent and the Magistrates on any subject unconnected with the internal economy of the force, the Commissioners of the Divisions are, by the orders of the Lieutenant-Governor, the constituted referees, whose decision will be at once acted upon. But it appears from the Resolution of the 22nd September 1862, that, a District Superintendent, dissatisfied with the decision of a Commissioner, may submit his case to the Inspector-General. It would then be for Government (in the judicial department) to decide.

Inspector-General to have powers of a Magistrate.

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the General Police District;

To exercise them under the orders of Government.

But shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

6. Repealed by Act X of 1882, see Schedule I. See last para. of s. 14, C. P. C.

Inspector-General, &c., to appoint and dismiss.

7. The appointment of all Police Officers other than those mentioned in Section IV of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend, or reduce any Police Officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any Police Officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof.

See I. L. R., 12 Calc., 427 and notes under s. 29.

Police Officers to receive certificates of office.

8. Every Police Officer so appointed shall receive on his appointment a certificate in the form annexed to his Act, under the seal of the Inspector-General or such other Officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a Police Officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the Police Force, and shall be immediately surrendered to the Superior Officer of such person or to some other Officer empowered to receive the same.

See *R.* v. *Dinonath Gangooly*, 8 B. L. R., App., 59.

Police Officers not to resign without leave of two months' notice.

9. No Police Officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent or by some other Officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign

his office unless he shall have given to his Superior Officer notice, in writing for a period of not less than two months of his intention to resign.

2 and 3 Vict., c. 47, s. 15, makes one month's notice of resignation sufficient.

Police Officers not to engage in other employment.

10. No Police Officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. Repealed by Act XVI of 1874.

Inspector-General to make Rules.

12. The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules as he shall deem expedient, relative to the organization, classification, and distribution of the Police Force, the places at which the Members of the Force shall reside and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the Police Force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty and for rendering such Force efficient in the discharge of his duties.

The following are extracted from the Metropolitan Police Orders:—"The Police are not to give any information whatever to persons connected with the Press relative to duties performed or orders received, or communicate in any manner with the Editors of Newspapers on Police matters without the concert of the Commissioner." Open Air Preaching—1. The Police are not to interrupt or in any way interfere with persons preaching in the open air, unless actual obstruction of the public thoroughfare be caused at the time, or some specific nuisance to the public or persons residing at the spot be thereby occasioned. 2. Persons committing such offences are to be civilly requested to move away, and if they refuse to do so, they are to be taken into custody, and charged with the offence. 3. The Police are not to permit preaching in a Park, unless it be in accordance with provisions of "The Parks Regulation Act, 1872."

Additional Police Officers employed at the cost of individuals.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the District, on the application of any person showing the

necessity thereof, to depute any additional number of Police Officers to keep the peace at any place within the General Police District, and for such time as shall be deemed proper. Such Force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application: Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the Police Officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional Force from the expiration of such notice.

Appointment of additional Force in the neighbourhood of Railway and other works.

14. Whenever any Railway, Canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional Police Force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional Force to such place, and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the Funds used in carrying on such work, manufactory, or concern, for the payment of the extra Force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional Police in disturbed or dangerous Districts.

15. It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the *Government Gazette*, and in such other manner as the Local Government shall direct, to employ any Police Force in excess of the ordinary fixed complement to be quartered in any part of the General Police District which shall be found to be in a disturbed or dangerous state, or in any part of the General Police District in which, from the

conduct of the inhabitants, he may deem it expedient to increase the number of Police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional Police Force, and the Magistrate of the District, after enquiry if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

Payment of money for support of additional Police Force.

16. All monies payable under the last three preceding Sections, on account of my additional Police Force employed as therein directed, shall be recoverable under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the District of such Magistrate, or by suit in any competent Court; and the monies paid on this account or so recovered shall be credited to a Fund to be called "The General Police Fund," and shall be applied to the maintenance of the Police Force under such orders as the Local Government shall pass.

Special Police Officers.

17. When it shall appear that any unlawful assembly, or riot, or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police Force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly, or riot, or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require to act as Special Police Officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

The High Court, while considering that an order by a Magistrate professing to act under this section was illegal, refused to interfere, on the ground that the order was one of an executive nature. 10 B. L. R., App., 4. The only remedy is an application to the Local Government. The High Court apparently overstepped their powers in interfering in a recent case from Cuttack.

The law in England as to special constables is as follows:—Whenever two or more Justices, on the oath of a credible witness, are satisfied that a tumult, riot, or felony has taken place, or may be reasonably apprehended, the Justices may nominate and appoint as many as they think fit of the householders or other persons not legally exempt from

serving in the office of petty Constable. These persons are to act as Special Constables, so long as the Justices think fit, for the preservation of the public peace, for the protection of the inhabitants, and the security of property.

Powers of Special Police Officers.

18. Every Special Police Officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary Officers of Police.

Refusal to serve as Special Police Officers.

19. If any person being appointed a Special Police Officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by Police Officers.

20. Police Officers, enrolled under this Act, shall not exercise any authority, except the authority provided for a Police Officer under this Act and any Act which shall hereafter be passed for regulating Criminal Procedure.

Village Police Officers.

21. Nothing in this Act shall affect any hereditary or other Village Police Officer, unless such Officer shall be enrolled as a Police Officer under this Act. When so enrolled, such Officer shall be bound by the provisions of the last preceding Section. No Hereditary or other Village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act XX of 1856 (*to make better provision for the appointment and maintenance of Police Chowkeedars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal*) is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District.

Police Officers to be considered always on duty and may be employed in any part of the General Police District.

22. Every Police Officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a Police Officer in any part of the General Police District.

Duties of Police Officers.

23. It shall be the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice; and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every Police Officer, for any of the purposes mentioned in this Section, without a warrant, to enter and inspect any drinking shop, gaming house, or other place of resort of loose and disorderly characters.

Police Officer may lay information, &c.

24. It shall be lawful for any Police Officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence. . . . . .

Last nine words of this section repealed by Act X of 1882, see Schedule I.

"It shall be lawful for *any* Police Officer." The following rules are in force in the Metropolitan Police:—

1. In no case is application to be made to a Magistrate for a summons against a person without the Commissioner's approval being first obtained on the proper printed form.

2. In all applications to Commissioner, the exact dates of offence and the statute under which proceedings are proposed to be taken are to be fully and accurately stated.

As a matter of practice in Bengal, applications for process are generally made through the District Superintendent.

Police Officer to take charge of unclaimed property and to be subject to Magistrate's orders as to the disposal of it.

25. It shall be the duty of every Police Officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the District. The Police Officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the District.

"Property found by persons and deposited at a Police Station may, after Commissioner's authority has been obtained, be delivered up to the finder on application at the expiration of three months." Metrop. Police Orders.

26. The Magistrate of the District may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Magistrate may detain property and issue proclamation.

27. If no person shall within the period allowed claim such property, it may be sold under the orders of the Magistrate of the District, and the proceeds shall be at the disposal of Government.

Confiscation of property if no claimant appear.

28. Every person, having ceased to be an enrolled Police Officer under this Act, who shall not forthwith deliver up his certificate and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Persons refusing to deliver up certificate, &c., on ceasing to be Police Officer.

This section is taken from 2 and 3 Vict., c. 47, s. 16, which, however, imposes a penalty of one month only. Any Justice may issue his warrant to search for and seize all clothing, &c., not delivered up.

29. Every Police Officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority; or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; or who shall engage without authority in any employment other than his Police duty; or who shall be guilty of cowardice, or who shall offer any unwarrantable person violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Penalties for neglect of duty, &c.

2 and 3 Vict., c. 47, s. 14, enacts that every Constable guilty of any neglect or violation of duty in his office of Constable is liable to a penalty of £10 or imprisonment for one month. The rule in the Metropolitan Police is that, except under very particular circumstances, a Police Constable convicted of any offence before a Magistrate is to be dismis

sed from the Police Force in consequence of that conviction. All pay due to a man dismissed may be forfeited by direction of the Commissioner of Police.

In the Metropolitan Police a District Superintendent may inflict fines upon any Sergeant or Constable for misconduct, not exceeding four days' pay; or may remove a Constable from any one class to that immediately below it; or may stop weekly leave for a limited period. They may also suspend, subject to confirmation by Commissioner or Assistant Commissioner. Under s. 29 only the Magistrate of the District can institute proceedings. Beng. Pol. Cir. 6, Feb. 16, 1867.

A District Superintendent directed his Constables to cut down the jungle in the vicinity of their lines, and on their refusal to comply ordered them extra drill every day. One of such Constables not turning out to such extra drill was prosecuted and convicted of neglect of duty under s. 29, Act V, 1861. *Held*, no offence under s. 29. The District Superintendent was not competent to order his Constables to cut down the jungle or, on their refusal to do so, to order them extra drill. I. L. R., 12 Calc., 427. Extra drill is not mentioned as a punishment in s. 7 of the Act. See Regulation XX. 1817, s. 21, para. 8, which prohibits Police Officers from employing Village Watchmen on their private concerns, or *on any duties unconnected with the Police*. See also Act VI, 1870, B. C., s. 40 (7) "The Chokidar shall obey the orders of the *panchayat* in regard to keeping watch in the village, and other matters *connected with his duties as Chokidar*." Village Watchmen cannot be lawfully ordered to cut wood, or do menial work. *A fortiori*, such orders could not be lawfully issued to regular Police Officers. The above ruling has been the subject of much criticism, but it appears to be in accord with the law. Before a Police Officer can be convicted of an offence under s. 29 of Act V of 1861, it must be found that he is guilty not of mere neglect, but of deliberate and intentional violation of duty.—17 W. R., Cr., 34.

A Police Officer, under suspension, cannot be convicted of withdrawing from the duties of his office without permission. 17 W. R., Cr., 12. The failure of a Police Constable to resume his duty on the expiration of his leave, does not constitute an offence under s. 29 of Act V of 1861. —I. L. R., 6 Calc., 624; 8 C. L. R., 56; and I. L. R., 6 All., 495.

In England, a Constable absconding from his duty, or quitting it without giving one month's notice, is liable to a penalty of £5, and to one month's imprisonment with hard labour, if he fails to deliver over the clothing and appointments supplied to him by the public service.

Mere rashness or negligence on the part of a Police Officer before ordering the search of a man's house does not constitute an offence amounting to violation of duty under s. 29, Act V of 1861. The violation there intended must be wilful, intentional violation of some clear duty or other.—19 W. R., Cr., 7.

A Police Officer while under suspension cannot be convicted of neglect of duty under s. 29 for anything done during that period. During suspension he cannot be considered as a Police Officer within the meaning of this Act.—8 B. L. R., App., 69.

Regulation of public procession, &c.

30. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets, or thoroughfares,

and prescribe the routes by which, and the times at which, such processions may pass. They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

Police to keep order in public roads, &c.

31. It shall be the duty of the Police to keep order on the public roads and in the public streets, thoroughfares, ghauts, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghaut, or landing place may be thronged or may be liable to be obstructed.

In order to establish that a road is a public road, it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that those acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a public highway.—6 C. L. R., 282.

The question of processions has been a good deal before the Courts in Madras. In a Resolution on the Tinnevelly Riot, 28th January 1869, para. 38, the Governor in Council declared "the public high streets in all towns are the property, not of any particular caste, but of the whole community; and every man, be his caste or religion what it may, has a right to the full use of them, provided that he does not obstruct or molest others in the use of them, and must be supported in the exercise of that right." But a later order called attention to the distinction between the right of the public to use highways for the purpose of ordinary convenience and the right to use them to carry out processions or get up demonstrations *hitherto unusual*, and calculated to offend prejudices or raise excitement; and the interdiction of the latter class was ordered if it was probable they would induce tumult or a breach of the peace. Both the executive and judicial authorities in Madras have acknowledged the existence in every citizen of the right to use a public highway for processional as well as ordinary purposes, and they have both recognized in the Magistrate a power to suspend and regulate, and in the police a power to regulate, the exercise of the right.—See I. L. R., 6 Mad., 218.

Penalty for disobeying orders issued under last two sections, &c.

32. Every person opposing, or not obeying the orders issued under the last two preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

33. Nothing in the last three preceding sections shall be deemed to interfere with the general control of the Magistrate of the District over the matters referred to therein.

Control of the Magistrate of the District under last three sections.

34. Any person who, on any road or in any street or thoroughfare, within the limits of any town to which this section shall be specially extended by the Local Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

Certain duties of Police Officers. Obstructions and Nuisances in roads.

FIRST. Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly, or furiously, or trains or breaks any horse or other cattle.

Slaughtering cattle, furious riding, &c.

SECOND. Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Cruelty to animals.

THIRD. Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Obstructing passengers.

FOURTH. Any person who exposes any goods for sale.

Exposing goods for sale on roads.

FIFTH. Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cow-shed, stable, or the like, or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

Throwing dirt into street.

SIXTH. Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Being found drunk in any thoroughfare.

SEVENTH. Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Indecent exposure of person.

EIGHTH. Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure.

Neglect to protect dangerous places.

This section must be extended to a whole town, and not to any part thereof.

2 and 3 Vict., c. 47, s. 54, contains some additional clauses, which are not in the Indian law, *e.g.*, turning loose any horse or cattle, or suffering to be at large any unmuzzled ferocious dog, negligence or ill-usage in driving cattle, affixing bills, destroying fences and shrubs, loitering of common prostitutes for prostitution or solicitation, to the annoyance of the inhabitants or passengers, selling profane, indecent, or obscene books and pictures, using profane, indecent, or obscene language, wantonly discharging firearms, throwing stones and missiles, letting off fireworks, ringing door-bells, extinguishing lamps, flying kites or playing at any game to the annoyance of the inhabitants or passengers, &c.

As to abuse of animals, dogs are used on the continent for drawing carts, trucks, and barrows. The English law makes this penal.

35. . . . . * Any charge against a Police Officer above the rank of a Constable under this Act shall be enquired into and determined only by an Officer exercising the powers of a Magistrate.

Jurisdiction.

Sections 36 to 40 repealed by Act X of 1882, but not in Repeal Schedule.

41. All sums paid for the service of process by Police Officers, and all rewards, forfeitures, and penalties or shares of rewards, forfeitures, and penalties, which by law are payable to informers, shall, when the information is laid by a Police Officer, be paid into the General Police Fund.

Rewards to Police and informers payable to General Police Fund.

42. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the General Police powers hereby given, shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defend-

Limitation of action.

* Repealed by Act X of 1882, see Schedule I.

ant, or to the District Superintendent or an Assistant District Superintendent of the District in whcih the act was committed, one month at least before the commencement of the action.

Tender of amends.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action.

Proviso.

Provided always that no action shall in any case lie where such Officer shall have been prosecuted criminally for the same act.

So much of this section as relates to limitation of suits, repealed by Act IX of 1871, schedule.

"If Police are proceeded against in respect of matters connected with public duty, and it is subsequently satisfactorily proved that no blame attached to them, the Commissioner may, if he thinks fit, recommend that the legal costs of defence should be paid out of the Police Fund. No request for the payment of *Counsel* in defending Police Officers before a Police Magistrate will be entertained. In the event of acquittal, the Commissioner may recommend the payment of the *solicitor's* fee."—Metrop. Police Orders.

"On the institution of any action against an officer of the Government for acts done in the discharge of his public duty, he should communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the Government to arrive at a decision on the real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer shall appear to have acted rightly, he will be directed to take the necessary steps to defend himself, the Government advancing the funds necessary for that purpose, to be refunded after the issue of the action is known, in case the circumstances then brought to light should prove the officer to have acted improperly. If, on the other hand, upon examination of his case by the Government, his conduct shall appear to have been clearly wrong, he will be informed that the Government will not interfere, and that he must defend himsef at his own charge." Circs. Nos. 5112—22 of 1st September 1869 and 38 of 7th July 1879.

"When a prosecution is instituted by a Government officer, such as the Judge or Magistrate, the officer charged should be allowed to defend himself, and Government will defray the cost in the event of his complete acquittal. In other cases the head of the department should decide, in communication with the local officers, whether the case is such that the accused should be defended by Government; and if so, the Government Pleader should be instructed accordingly. When there is reason to believe that the officer is guilty, he should of course not be defended by Government; but when the head of the department and

the local officers agree that he is being wrongly prosecuted by a private individual through revenge or malice, it would be unjust to leave the officer to defend himself."—Cir. No. 43 of 14th August 1879.

Plea that act was done under a warrant.

43. When any action or prosecution shall be brought or any proceedings held against any Police Officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favor notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine.

Proviso.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

Police Officers to keep a diary.

44. It shall be the duty of every Officer in charge of a Police Station to keep a general diary in such a form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charge preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the District shall be at liberty to call for and inspect such diary.

Local Government empowered to prescribe the form of Returns.

45. The Local Government may direct the submission of such Returns by the Inspector-General and other Police Officers as to such Local Government shall seem proper, and may prescribe the form in which such Returns shall be made.

Scope of Act.

46. This Act shall not take effect in any Presidency, Province, or place, unless the same shall be extended to such Presidency, Province, or place by the Governor-General of India in Council by an order to be published in the *Government Gazette*. When the Act shall have been so extended

it shall be carried into effect in such Presidency, Province, or place as the Local Government, by an order to be published in the official Gazette, shall direct.

Authority of District Superintendent of Police over Village Police.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the District over any Village Watchman or other Village Police Officer for the purposes of Police, shall be exercised, subject to the general control of the Magistrate of the District, by the District Superintendent of Police.

FORM (*see Section VIII*).

A. B. has been appointed a Member of the Police Force, under Act V of 1861, and is vested with the powers, functions, and privileges of a Police Officer.

WHIPPING ACT.

ACT VI OF 1864.

An Act to authorize the punishment of whipping in certain cases.

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say:

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

10. Lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

"Whoever," *i. e.*, whether a juvenile or an adult offender. 7 Bom., 70.

Where two convictions take place at one and the same time, whipping cannot be awarded as an additional punishment for the latter of the two convictions. 4 B. L. R., A. Cr., 5. But the Madras High Court have held otherwise. The section does not apply when the second conviction is for an offence *committed* previously to the first conviction. 3 Bom., 38; 7 Bom., 71.

Whipping can only be awarded on second conviction, when the previous conviction has been for the very same specific offence. 5 Mad. H. C. Rep., 5 Ap. i., 39. P. was convicted under s. 411, Penal Code. He confessed to two previous convictions for theft. He was sentenced to rigorous imprisonment and whipping. *Held*, that the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal.—I. L. R., 1 All., 666. See also 4 W. R., Cr., 20; and 4 Bom., 5.

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

IV. Whoever having been previously convicted of any one of the following offences, shall be again convicted of the same offence may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say :—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or dacoity, as defined in Sections 390 and 391 of the said Code.

9, Attempting to commit robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Juvenile offenders punishable with whipping for offences not punishable with death.

V. Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the said Code.

Unless an accused person is found to be under sixteen years of age, he cannot be punished as a "juvenile offender" under this section. Ruling of Sadr Nizamat Adalat, Agra, 3rd May 1864; 8 Bom. H. C. Cr., 9; I. L. R., 6 All., 482. Secs 2, 3, and 4 apply to juvenile offenders as well as sec. 5. See sec. 392, C. P. C.

When offences specified in Section 4 may be punished with whipping in frontier district and wild tracts.

VI. Whenever any Local Government shall, by notification in the official Gazette, have declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country after such notification as aforesaid commit any of the offences specified in Section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

Sec. 7 is repealed by the Criminal Procedure Code, see the Schedule.

Secs. 7 to 12 are now secs. 391, 392, 393, &c., of the Criminal Procedure Code, Act X of 1882.

THE INDIAN POST OFFICE ACT.

ACT NO. XIV OF 1866, AS AMENDED BY ACT III OF 1882.

An Act to amend the law for the management of the Post Office, for the regulation of the Duties of Postage, and for the punishment of offences against the Post Office.

Preamble.

WHEREAS it is expedient to amend the law for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Post Office Act, 1866."

Interpretation-clause.

2. In this Act—unless there be something repugnant in the subject or context—

"Criminal Court."

"Criminal Court" includes every Judge, Magistrate, Justice of the Peace or Police Magistrate lawfully exercising jurisdiction in criminal cases:

"Fine."

"Fine" includes a penalty or forfeiture, or a sum of money due upon a forfeited recognizance:

"Clubbed packet."

"Clubbed packet" shall be taken to mean a packet containing a collection of letters, not made by an agent of the Post Office, transmitted through the Post Office with the view of the enclosed letters being delivered to more than one person through the agent of the person by whom the packet was made up:

"Newspaper."

"Newspaper" shall include any periodical publication, published at regular intervals not exceeding thirty-one days:

"Mails."

"Mails" shall include any letter, parcel or other article conveyed under the provisions of this Act, as well as any box, bag or other article, or any carriage, horse, messenger or other person employed or used by the Post Office for the conveyance or safe custody of the mails; and

"British India." "British India" includes the territories which are now or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (An Act for the better government of India).

3. Repealed by Act No. XIV of 1870.

References to Act XVII, 1854, read as to this Act.

4. References to any section of Act No. XVII of 1854, made in any Act passed subsequent thereto, shall be read as if made to the corresponding section of this Act.

Exclusive privilege of carrying letters vested in Government of India.

5. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the said Government shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases, that is to say—

(1) letters sent by a private friend in his way, journey or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward or other profit or advantage for receiving, carrying or delivering the same:

(2) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose:

(3) letters solely concerning goods or other property sent either by sea or land to be delivered with the goods or property which such letters concern, without hire, reward or other profit or advantage for receiving, carrying or delivering such letters.

Bar to collection of excepted letters.

But nothing herein contained shall authorize any person to make a collection of such excepted letters for the purpose of sending them in the manner hereby authorized.

Persons expressly forbidden to collect, carry or deliver letters.

6. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the following persons are expressly forbidden to collect, carry, tender or deliver any letter or letters, or to receive any letter for the

purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say—

(1) common carriers of passengers or goods, and their drivers, servants or agents, except letters solely concerning goods in their carriages:

(2) owners and commanders of ships, steam-boats or other vessels passing on any river or canal, or to or from any port in British India, and their servants or agents, except letters solely concerning goods on board.

Appointment of Officers for service of Post Office.

7. For carrying on the service of the Post Office, it shall be lawful for the Governor-General of India in Council to appoint or to authorize the appointment of such officers, with such official styles or designations, and to invest them with, and delegate to them, such powers, not inconsistent with the provisions of this Act, as the said Governor-General of India in Council may from time to time deem expedient.

PART VI.

POSTAGE-STAMPS.

Stamped letters considered prepaid.

35. All letters and other articles having a stamp or stamps affixed thereto (such stamp or stamps in every case being affixed on the outside, and being equal in value to the rate or rates of postage to which such letters or other articles are liable under this Act), shall, provided the stamp or stamps shall not have been used before, be considered as prepaid.

Postage-stamps provided by Government.

36. The Governor-General of India in Council shall cause postage-stamps to be provided denoting such values as the said Governor General of India in Council may direct, and shall give such orders, and make such other regulations relative thereto, as may be deemed expedient.

Management of postage-stamps.

37. Postage-stamps, provided as aforesaid, shall be under the care and management of such officer or officers as the Governor-General of India in Council shall from time to time direct:

Purpose of issue.

Postage-stamps shall be considered as stamps issued by Government for the purpose of revenue, within the meaning of the Indian

Penal Code; and all sums of money realized by the sale of such stamps shall be carried in the public accounts to the credit of the Post Office.

Crediting sale-proceeds.

38. The Governor-General of India in Council may, from time to time, make rules for the appointment and government of vendors of postage-stamps, and thereby direct how and under what terms and conditions postage-stamps may be supplied to them for sale; and whether any and what security shall be given by such vendors; and whether any and what remuneration or discount shall be allowed to them; and how and in what manner, and at what time or times, such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them, or re-deliver the stamps entrusted to them.

Power to make rules for appointment and government of vendors of postage-stamps.

39. Government vendors of postage-stamps shall be bound by such rules, and in case of any wilful breach thereof, shall be punished with a fine not exceeding two hundred rupees in addition to any other proceedings to which they may be liable.

Penalty for breach of such rules.

40. Any Government vendor of postage-stamps who shall be convicted of refusing, or unnecessarily delaying without reasonable excuse, to furnish postage-stamps to any person desiring to purchase the same, and tendering in lawful currency the full value thereof (the stamp-vendor having in his possession for sale sufficient stamps of the description and value required), shall be punished with a fine not exceeding one hundred rupees.

Penalty for refusing to supply stamps.

41. Any Government vendor of postage-stamps convicted of taking from a purchaser a higher price than the value denoted on the stamps sold, shall be punished on conviction with imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding six months, or shall be liable to a fine not exceeding one hundred rupees; and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a Criminal Court, in the same manner as any penalty under this Act.

Penalty for selling stamps for price higher than value denoted.

PART VII.

OFFENCES AGAINST THE POST OFFICE.

Penalty for sending dangerous substance by post.

42. No person shall knowingly post, or send, or tender or deliver in order to be sent by the post, any letter, parcel or packet containing any explosive or other dangerous material or substance; and any person contravening this prohibition shall be punished for every such offence with a fine not exceeding two hundred rupees.

Making false certificate to defraud Post-office.

43. Every person who shall, for the purpose of defrauding the Post-office revenue, wilfully certify by writing on any official or other letter or packet delivered at any Post Office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver, for conveyance by post, any letter or packet with any such false certificate thereon; and every person who shall knowingly send or permit to be sent by post, under colour or pretence of an official communication, any letter, paper, writing or other enclosure of a private nature,

Sending private letter as official.

Penalty.

shall, for every such offence, be punished with a fine not exceeding five hundred rupees.

Penalty for detaining mails or opening mail-bags.

44. It shall not be lawful for any person, unless acting by express order of the Government, to detain, except for a criminal offence, a Post-office messenger whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet or mail-bag or box in transit from one Post Office to another, and every person who shall be guilty of any of the offences mentioned in this section, shall be punished with a fine not exceeding five hundred rupees.

Penalty for retaining letters, &c., delivered by mistake.

45. Every person who shall fraudulently retain, or wilfully secrete or make away with, or keep or detain, or, being required to deliver up by an officer of the Post Office, shall neglect or refuse to deliver

up a post-letter or other article which ought to have been delivered to any other person, or a mail-bag, box or packet containing a letter or other article which shall have been sent by the post, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for conveying letter in breach of privilege.

46. *Clause* 1.—Every person who shall convey otherwise than by the post, a letter not excepted from the said exclusive privilege conferred on the Government of India by section 5 of this Act shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees.

Penalty for performing, otherwise than by post, services incidental to conveying letters.

Clause 2.—Every person who shall perform, otherwise than by the post, any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, tendering or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for making clubbed packet or tendering or delivering letter to be sent therein.

Clause 3.—Every person who shall make a collection of letters for the purpose of transmitting them through the post in a clubbed packet, and every person who shall knowingly tender or deliver a letter to be sent in a clubbed packet, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for sending letter in breach of privilege, or delivering letter to be so sent.

Clause 4.—Every person who shall send a letter not excepted from the said exclusive privilege, otherwise than by the post, or shall either tender or deliver a letter not so excepted, in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for collecting excepted letters to send them otherwise than by post.

Clause 5.—Every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Clause 6.—Every person who shall carry, receive, tender or deliver a letter, or collect letters contrary to the provisions of section 6 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for breach of provisions of section 6.

Clause 7.—Every person who shall be in the practice of committing any of the acts mentioned in this section, shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees.

Penalty for practice of acts mentioned in section.

47. Every person employed to convey or deliver any mail-bag or box, or any letter or other article, sent by post, who shall be guilty, while so employed, of drunkenness, carelessness or other misconduct, whereby the safety of any such bag, box, or letter or other article shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, box, letter or other article; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter or other article, shall be liable to a fine not exceeding fifty rupees;

Penalty for neglect on part of persons employed to carry mails.

and any person employed to deliver a letter or other article sent by the post, who shall not duly deliver the same, shall within a reasonable time not exceeding twenty-four hours, report the fact at the Post Office where he received such letter or other article, and return the same; and if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees.

48. Whoever, being in the employ of the Government in the Post Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail-bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding seven years, and shall also be liable to fine.

Penalty for stealing, &c., or opening, letters, &c., by persons employed in Post Office.

Penalty for fraudulently altering marks on letters, &c., by persons employed in Post Office.

49. Whoever, being in such employ as last aforesaid, shall fraudulently put any wrong mark on any letter or other article, or shall fraudulently alter, remove or cause to disappear any mark or stamp which is on any letter or other article; or shall fraudulently use or place with or upon any letter or other article, any stamp which shall have been removed from any other letter or other article; or, being entrusted with the delivery of any letter or other article, shall knowingly demand or receive any sum of money for the postage thereof other than the sum duly chargeable for such postage, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

Penalty for preparing incorrectly, or altering or secreting documents by persons employed in Post Office.

50. Whoever, being in such employ as last aforesaid, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare the document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

Penalty for sending letters on which postage not paid or charged, by persons employed in Post Office.

51. Whoever, being in such employ as last aforesaid, shall send by the post, or put into any mail-bag or box, any unstamped letter or other article upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the Government of the postage on such letter or other article, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

Penalty for abetting or concealing offences under Act.

52. Whoever abets, within the meaning of the Indian Penal Code, or conceals, any offence made punishable by this Act, shall be punished with the punishment provided for such offence.

53. Any person, whether a European British subject or not, who shall be guilty of any offence for which according to the provisions of this Act he shall be liable to a fine only, shall be punishable for such offence by any Criminal Court upon summary conviction.

Person charged with offence punishable with fine only may be summarily convicted.

54. No conviction, order or judgment of any Criminal Court, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order or judgment, the evidence on which it proceeds, but the depositions taken or a copy of them shall be returned with the conviction, order or judgment, and if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions.

Conviction quashed on merits only.

Form of conviction.

55. Repealed by Act XII of 1876.

56. All fines imposed under the authority of this Act, for offences punishable by fine only by any Criminal Court, may, in case, of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers.

Fines how levied.

In case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take security by way of recognizance or otherwise.

Detention of offender.

If upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such offi-

Imprisonment if no sufficient distress, &c.

cer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Share of fine to informer.

57. A share not exceeding one moiety of every fine imposed and recovered under this Act, may be awarded to the informer.

No proceedings for recovery of fines taken without order.

58. No proceedings shall be taken for the recovery of any fine imposed under the authority of this Act, for offences punishable by fine only, without an order of Government, or an order in writing under the hand of the Director-General of the Post Office, or of a Postmaster-General, or other officer specially invested with the powers of a Postmaster-General.

Punishment of Post Office servants committing offences in allied States.

59. If any public servant who shall be employed in the Post Office Department, or shall be appointed a vendor of postage-stamps, or entrusted by the Government of India or any Local Government with the sale of postage-stamps within the dominions of any Foreign Prince or State in India in alliance with Her Majesty, in which a post shall be established by the Government of India, shall, within the dominions of such Prince or State, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed or entrusted as aforesaid within British India, such public servant shall be guilty of an offence, and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within British India;

Officers authorized to try them.

and every such person may be tried, convicted and punished, either by fine or otherwise, according to the nature of the offence, by any Court or officer duly empowered by the Governor-

General of India in Council to take cognizance of offences committed in such dominions by public servants, or by any Court or Magistrate, or other competent officer in any part of British India, in the same manner as if the offence had been committed in such part.

Letters, &c., suspected to contain contraband articles, or writing in contravention of Act, how dealt with.

60. If any officer in charge of a Post Office shall suspect that any letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government; or that any letter or other article lying for delivery at the Post Office contains any writing or enclosure in contravention of the provisions of section 14, 16 or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed, to attend at the Post Office, by himself or agent within 48 hours after the arrival thereof at that Post Office and to open the same in the presence of the person to whom it is directed, or of that person's agent, and if that person shall not so attend by himself or agent, then to open it in the absence of that person:

Witnesses to examination of letter.

Provided that if the officer in charge be under the rank of a Postmaster, he shall call in two respectable persons as witnesses before he shall open a letter or other article in the absence of the person to whom it is addressed:

Delivery of letter to addressee.

Provided also, that in all cases the opened letter or other article shall be subsequently delivered to the person to whom it is addressed, unless it be required for ulterior proceedings, and that the opening of the same and the circumstances connected therewith shall be immediately reported to the Postmaster-General.

Power to require customs-pass.

It shall also be lawful for any officer in charge of a Post Office to refuse to forward any parcel through the Post Office by sea to any foreign port, or to any place not on the Continent of India, unless such parcel be accompanied by a Custom-house pass.

60*A*. Whenever any notification has been published under section nineteen of the Sea Customs Act, 1878, in respect of any newspaper, book, pamphlet, placard, broad-

sheet or other document, any officer of the Postal Department empowered in this behalf by the Governor-General in Council by name or in virtue of his office, may search or cause search to be made for any copies of the same in the custody of that Department, and shall deliver all such copies found to such officer as the Governor-General in Council may appoint in this behalf by name or in virtue of his office, and such copies may be disposed of in such manner as the Governor-General in Council may from time to time direct.

This section is added by Act III, 1882.

In charges for offences under Act, property sent by post laid in Postmaster-General.

61. Whenever an offence shall be committed in respect of any mail-bag or box, or any letter or other article sent by the post, it shall be lawful to lay, in the charge to be preferred against the offender, the property of such mail-bag, box, letter or other article in the Postmaster-General of the Presidency; and it shall not be necessary in the charge to allege or to prove upon the trial or otherwise, that such mail-bag, box, letter or other article was of any value; and in any charge to be preferred against any person employed under the Post Office for any offence committed against this Act, it shall be lawful to state that such offender was employed under the Post Office at the time of committing the offence, without stating further the nature or particulars of his employment.

Proof of value unnecessary.

Statement that offender employed in Post Office sufficient.

PART VIII.

MISCELLANEOUS.

Letters on Her Majesty's service, duly certified as such, how charged.

62. Letters and other articles on Her Majesty's service certified to be such by the signature of any public officer authorized in that behalf by the Governor-General of India in Council, shall be forwarded by the post, and the postage due thereon shall be charged to or recovered from the several public departments to or from which such letters or packets are sent, in such manner as the said Governor-General of India in Council shall, from time to time, direct.

63. It shall be lawful for the Governor-General of India in Council from time to time to frame rules for the conduct of the Post Office not inconsistent with this Act, and therein to prescribe the regulations, conditions and restrictions according to which all letters and other articles shall be posted, forwarded, conveyed and delivered.

Governor-General may frame rules.

The transmission of opium by post, except on account of Government, is prohibited by India Notification No. 3526, dated 17th September 1869.

64. It shall be lawful for the Governor-General of India in Council from time to time to frame rules for the management of all or any zamíndárí, tháná or other district-dáks, and to declare from time to time what portions of this Act shall be applicable to such dáks, and to persons employed in connection therewith.

District-dáks.

65. The Government shall not be responsible for any loss or damage which may occur in respect of any thing entrusted to the Post Office for conveyance;

Government not responsible for loss.

and no person employed by the Government in the Post Office Department shall be responsible for any such loss or damage, unless that person shall cause such loss or damage negligently, maliciously or fraudulently.

Responsibility of its servants.

THE GENERAL CLAUSES ACT.

ACT NO. I OF 1868.

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

WHEREAS it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts; It is hereby enacted as follows:—

Preamble.

1. This Act may be cited as "The General Clauses Act, 1868."

Short title.

Interpretation-clause.

2. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

Gender.

(1.) Words importing the masculine gender shall be taken to include females;

Number.

(2.) Words in the singular shall include the plural and *vice versâ*;

'Person.'

(3.) 'Person' shall include any company, or association, or body of individuals whether incorporated or not;

'Year' and 'month.'

(4.) 'Year' and 'month' shall respectively mean a year and month reckoned according to the British calendar;

'Immoveable property.'

(5.) 'Immoveable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

'Moveable property.'

(6.) 'Moveable property' shall mean property of every description except immoveable property;

'Her Majesty.'

(7.) 'Her Majesty' shall include her heirs and successors to the Crown;

'British India.'

(8.) 'British India' shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island, Singapore and Malacca;

'Government of India.'

(9.) 'Government of India' shall denote the Governor General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

'Local Government.'

(10.) 'Local Government' shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

'High Court.'

(11.) 'High Court' shall mean the highest Civil Court of appeal in such part;

'District Judge.'

(12.) 'District Judge' shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

'Magistrate.'

(13.) 'Magistrate' shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;

'Barrister.'

(14.) 'Barrister' shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

'Section.'

(15.) 'Section' shall denote a section of the Act in which the word occurs;

'Will.'

(16.) 'Will' shall include a codicil and every writing making a voluntary posthumous distribution of property;

'Oath.' 'swear' and 'affidavit.'

(17.) 'Oath,' 'swear' and 'affidavit' shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

'Imprisonment.'

(18.) 'Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code;

'Son.' 'Father.'

(19.) And in the case of any one whose personal law permits adoption, 'son' shall include an adopted son, and 'father' an adoptive father.

3. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation:—

Revival of repealed enactments.

(1.) For the purpose of reviving, either wholly or partially, a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose;

Commencement of time.

(2.) For the purpose of excluding the first in a series of days of any other period of time, it shall be sufficient to use the word 'from';

(3.) For the purpose of including the last in a series of days or any other period of time it shall be sufficient to use the word 'to';

Termination of time.

(4.) For the purpose of expressing that a law relative to the chief or superior of an office, shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

Official chiefs and subordinates.

(5.) For the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

Successors.

(6.) For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

Substitution of functionaries.

4. Whenever by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof is leviable on any given quantity, by weight, measure or value, of any goods or merchandize, a like duty shall be leviable according to the same rate on any greater or less quantity.

Duty may be taken *pro rata*.

5. The provisions of sections sixty-three to seventy, both inclusive, of the Indian Penal Code, and of section sixty-one of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

Recovery of fines.

See also Act V of 1867 (B. C.), s. 4.

6. The repeal of any Statute, Act or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

Matters done under an enactment before its repeal to be unaffected.

Sections 7, 8, repealed by Act I, 1872.

THE PRISONERS' TESTIMONY ACT.

ACT NO. XV OF 1869.

An Act to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.

Preamble.

WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Prisoners' Testimony Act, 1869."

Presidency Small Cause Courts.

2. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

Police Magistrates.

PART II.

BRINGING UP PRISONERS.

Criminal Courts may make orders under Act.

3. Any Criminal Court not inferior to the Court of a Subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in schedule

A or schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail.

See Act X, 1872, s. 2, which enacts that, in every Act passed before this Act, the expression "Subordinate Magistrate, first class," shall be deemed to mean "Magistrate of the second class, &c."

See Act X of 1882, s. 3.

Civil Courts may make orders under Act.

4. Any Civil Court may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form in the said schedule A, directed to the officer in charge of the said jail.

Court to countersign orders.

5. When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal, Madras and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge, or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate.

Statements of facts necessitating order.

Every order so submitted shall be accompanied by a statement under the hand of the Judge of the facts which in his opinion render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

Order to be transmitted through Magistrate of the District in which the person is confined.

6. When any person for whose attendance an order as hereinbefore mentioned shall be made is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the District or division of a District in which

the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

7. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said schedule A, directed to the officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the District or division of a District in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined.

For the purposes of this section and sections three and four, the Chief Commissioner of British Burma shall be deemed to be a High Court: the Court of a Recorder appointed under Act No. XXI of 1863 shall be deemed to be subordinate to the said Chief Commissioner; and every jail situate in British Burma shall be deemed to be situate within the local limits of the said Chief Commissioner's appellate jurisdiction.

See s. 512, C. P. C.

Persons confined beyond limits of appellate jurisdiction of High Court.

8. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal

matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may from time to time prescribe.

To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma for the purpose of giving evidence in any criminal matter in the Court of a Recorder appointed under the said Act No. XXI of 1863, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

Prisoners to be brought up.

9. Upon delivery of any order under this Act to the officer in charge of the jail in which the person named therein is confined, such officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

Power to Government to exempt certain prisoners from operation of Act.

10. The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette, direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in sections twelve, thirteen and fourteen, shall not apply to such person or class of persons.

When jailor may disobey orders.

11. When any person named in any order made under section three, section four, or section seven appears to be from sickness or other infirmity unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the District or division of a

District in which such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined;

then and in every such case the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued, a statement of his reason for not obeying the same:

Provided that the said officer shall not so abstain when the order has been made under section three,

and the person named in the order is confined under committal for trial or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed,

and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

PART III.

COMMISSIONS.

Commission for examination of prisoners.

12. Whenever it shall appear to any Civil Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in section ten or section eleven cannot be brought up before it, is material in any matter depending before such Court,

and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter,

and in any case in which the District Judge shall under section five have declined to countersign the order for removal,

the Court may , if it think fit, issue a commission under the provisions of the Code ofCivil Procedure for the examination of such person in the jail in which he is confined.

Commission for examination of prisoners beyond limits of appellate jurisdiction of High Court.

13. Whenever it shall appear to any High Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court, or before any Court subordinate thereto, the High Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

Commission how to be directed.

14. Every commission issued under section twelve or section thirteen shall be directed to the District Court of the District wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court thinks fit.

PART IV.

SERVICE OF PROCESS ON PRISONERS.

Process how served on prisoners.

15. When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

16. Every officer in charge of the jail upon whom any such service as is mentioned in section fifteen shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof.

Such certificate shall be sufficient *primâ facie* evidence of the service of such person; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the Post Office by registered letter.

So much of ss. 15 and 16 as relates to process issued by a Civil Court was repealed by Act X, 1877.

PART V.

MISCELLANEOUS.

Deposit of costs.

17. No order in any civil matter shall be made by a Court under any of the provisions hereinbefore contained until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that if upon any application for such order it appear to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.

Power to make rules.

18. It shall be lawful for the Local Government and in cases arising under section eight, for the Governor-General of India in Council, to make rules consistent with this Act

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of officers in all other matters connected with the enforcement of this Act;

and from time to time to alter and add to the rules so made.

For rules framed under this section, see Bengal Government Circular No. 6, dated 11th January 1870.

Publication of rules.

19. All such rules, alterations and additions shall be published in the official Gazette, and shall, from the date of such publication, be deemed to have the force of law.

Power to declare who shall be deemed officer in charge of jail.

20. The Local Government may also declare in each case what officer shall, for the purposes of this Act, be deemed to be 'the officer in charge of the jail.'

SCHEDULE A.

Court of

To the officer in charge of the (*state name of jail*).

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [*or* in a certain charge or prosecution now pending before against *or as the case may be*] and, after the said shall then and there have given his testimony before the said or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) *C. D.*

SCHEDULE B.

Court of

To the officer in charge of the (*state name of jail*).

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before , and, after such charge shall have been disposed of or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) *C. D.*

THE CATTLE-TRESPASS ACT.

ACT NO. I OF 1871 (WITH AMENDING ACT NO. XVIII OF 1883).

An Act to consolidate and amend the law relating to Trespasses by Cattle.

CHAPTER I.

PRELIMINARY.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by Cattle; It is hereby enacted as follows:—

Short title.

1. This Act may be called 'The Cattle-trespass Act, 1871.'

Local extent.

It extends to the whole of British India except the Presidency Towns and such districts or tracts of country as the Local Government, with the sanction of the Governor-General in Council, may exclude from its operation.

Commencement of Act.

And it shall come into force on the passing thereof.

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed and villages determined, under Act No. III of 1857 (*relating to trespasses by Cattle*), shall be deemed to be, respectively, established, appointed and determined under this Act.

Interpretation-clause.

3. In this Act—

'Officer of Police' includes also Village Watchman, and 'Cattle' includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

"The village by which every pound is to be used shall be determined by the Magistrate of the District." See also s. 10, "the pound established for the village in which the land is situate." People are not at liberty to impound in any pound they please. But, for special reasons, the District Magistrate has probably the power to allow any particular pound to be used. There is sometimes a fight between an indigo-factory and a hostile zemindar to get control over the pounds. When I was in Midnapore, all the pounds in a pergunnah belonging to Messrs. Watson & Co. were taken by the ryots, friends, and dependents of a man who was hostile to them. Finding that cattle impounded by them were released without payment of any fine, Messrs. Watson & Co. began to bring trespassing cattle all the way into the sudder pound. The opposite party objected, but, if I recollect right, their objection was disallowed.

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Ex-officio pound-keepers in Madras and Bombay.

Provided that, in the Presidency of Fort St. George, the heads of villages, and, in the Presidency of Bombay, the police patils, or (where there are no police patils) the heads of villages, shall be *ex-officio* the keepers of village-pounds.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be public servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

DUTIES OF POUND-KEEPERS.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

Cattle damaging land.

10. The cultivator or occupier of any land,

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and take them or cause them to be taken without unnecessary delay to the pound established for the village in which the land is situate.

Police to aid seizures.

All officers of police shall, when required, aid in preventing (*a*) resistance to seizures and (*b*) rescues from persons making such seizures.

Under this section the Magistrate has the power to decide who is the occupier of the land.—23 W. R., Cr., 2. In the case of land bearing crops or trees capable of being damaged by cattle, and also all fenced land, trespass without damage should be sufficient to warrant seizure of stray cattle, as under s. 11. As the law now stands, cattle found trespassing cannot be seized and detained by the person injured until compensation is made for the damage done.

The Cattle-Trespass Act requires to be thoroughly recast to suit the conditions of the country and requirements of the agricultural community. Numbers of cases are brought, the decision of which is generally very unsatisfactory. The pound may be far away, and often there is no *bonâ fide* attempt to impound, injured parties merely making a demonstration of doing so. If the owner of the animal does not re-

imburse him for the damage done. a case of cattle rescue is brought, which is thus half a true, and half a fictitious case. I am inclined to think there should be a pound enclosure in almost every village, trespassing cattle to be detained there until the dispute were decided by the villagers or the Magistrate. The latter might release the animal on security given by the owner for the amount of its value. Except in the case of fallow land, mere trespass should warrant the imposition of *some* penalty, and damage of a higher penalty. The proceedings should be strictly non-judicial, with absolutely no appeal or revision. This fact would induce the parties to come to terms at once without resorting to chicanery.

Cattle damaging public roads, canals and embankments.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon,

and shall take them without unnecessary delay to the nearest pound.

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale:—

Elephant	two rupees.
Camel or buffalo	eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	four „
Calf, ass, or pig	two „
Ram, ewe, sheep, lamb, goat or kid	one anna.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

List of fines and charges for feeding.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

I think the fines under this section should be enhanced. The fines will now go to the Local Boards under Act XVIII of 1883.

It is now well-worth an owner's while to risk the payment of a paltry fine, especially in districts where grazing is scarce.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

"The pound-keeper shall report." Omission to do so is punishable under s. 176, P. C.

Delivery to owner disputing legality of seizure but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions as are referred to in section fourteen.

Procedure when owner refuses or omits to pay the fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Deduction of fines and expenses.

The remaining cattle and the balance of the purchase money, if any, shall be delivered to the owner or his agent, together with an account showing—

Delivery of unsold cattle and balance of proceeds.

(*a*) the number of cattle seized,
(*b*) the time during which they have been impounded,
(*c*) the amount of fines and charges incurred,
(*d*) the number of cattle sold,
(*e*) the proceeds of sale, and
(*f*) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Receipt.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

Disposal of fines, expenses and surplus proceeds of sale.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

Application of fines and unclaimed proceeds of sales.

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURES.

Power to make complaints.

20. Any person whose cattle have been seized and detained under this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

A suit for compensation for expenses incurred in releasing cattle, which were wrongfully impounded by the defendant, will not lie in a Civil Court. The Legislature, when establishing pounds by Act I of 1871, gave a special remedy in cases of illegal seizure, and that is the only one available.—2 C. L. R., 344.

Procedure on complaint.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded,

he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure.

22. If the seizure be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure and detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Release of cattle.

and if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure.

The illegal seizure of cattle under s. 22 of Act I of 1871 is not a criminal offence. The law allows certain Magistrates to adjudicate compensation to a party injured by an illegal seizure. Court-fees paid by the complainant may form part of such compensation. It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded.—2 C. L. R., 507; also I. L. R., 7 Mad., 345.

Recovery of compensation.

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate.

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Recovery of penalty for mischief committed by causing cattle to trespass.

25. Any fine imposed for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they

were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for damage caused to land or crops or public roads, by pigs.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

This section should be extended to all cattle, and a fine imposed of so much per head of cattle trespassing. It does not appear to be necessary under this section that the animals should be caught and impounded to render the owner liable. Mischief under the Penal Code must be *intentional;* but it is almost impossible to prove such intention against the owners of trespassing cattle. If mere negligence in respect of pigs is punishable, the negligence of owners of other cattle should be similarly punished when damage is caused. I think there should be no dual jurisdiction of Magistrates and Civil Courts under this Act. In cases of illegal seizure, compensation is awardable by the Magistrate. They should also have power to assess and levy damages in cases of trespass, to be recoverable by sale of the trespassing animal, as in cases of mischief (s. 25), and by summary process, when the sale proceeds of the cattle are insufficient. In several of the States of America, cattle may be shot where they have broken substantial fences or are caught trespassing at night.

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application of fines recovered under section 25, 26, or 27.

28. All fines recovered under section twenty-five, section twenty-six or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate, shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

SCHEDULE.

(*See section* 2.)

Number and Year of Act.	Extent of Repeal.
III of 1857 ...	The whole.
V of 1860 ...	
XXII of 1861 ...	

ACT No. XVIII OF 1883.

An Act to consolidate and amend the law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by Cattle; It is hereby enacted as follows:—

Power for Local Government to transfer functions of District Magistrate or Local Government to local authority, and direct that surplus receipts be credited to local fund.

1. The Local Government may, from time to time, by order notified in the local official Gazette—

(*a*) transfer to any local authority, within any part of the territories under its administration in which the Cattle-trespass Act, 1871, is in operation, all or any of the functions of the Local Government or the Magis-

trate of the District under that Act, within the local area, subject to the jurisdiction of the local authority; or

(*b*) direct that the whole or any part of the surplus accruing in any district under section eighteen of that Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district;

and may, from time to time, in like manner, cancel any order made under this section.

Definitions.

2. In this Act—

"local authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area; and

"local fund" means any fund under the control or management of a local authority.

THE PRISONERS' ACT.

ACT NO. V OF 1871 (AS AMENDED BY ACTS IX OF 1882 AND X OF 1885).

An Act to consolidate the laws relating to Prisoners confined by order of a Court.

Preamble.

WHEREAS it is expedient to amend Act No. V of 1871 (*to consolidate the laws relating to prisoners confined by order of a Court*); It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Prisoners' Act, 1871":

Local extent.

It extends to the whole of British India;

Commencement

And it shall come into force on the 1st day of January 1883.

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

II.—Prisoners in the Presidency Towns.

Warrants and writs to be directed to Police-officers.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to and executed by any officer of Police within the local limits of such jurisdiction.

Power to appoint Superintendents of Presidency Prisons.

4. The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

All such officers appointed under any Act hereby repealed, shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison, in Madras, the Superintendent of Prisons for the town of Madras, and in Bombay, by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as 'the Superintendent.'

Superintendents to detain persons committed.

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to return writs, &c., after execution or discharge.

6. The Superintendent shall forthwith after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been execu-

ted, or why the person committed thereby has been discharged from custody before the execution thereof.

Delivery of persons sentenced to imprisonment or death.

7. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

8. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Order under Mutiny Act for intermediate custody.

9. Whenever any Judge of a High Court makes, under any Act for the time being in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, an order for the intermediate custody of an offender sentenced by a Court Martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

Committals by High Court in execution of a decree or for contempt.

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Delivery of persons sentenced by Police Magistrate.

11. Whenever any person is sentenced by a Magistrate of Police for the Town of Calcutta, Madras, or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

13. Pending any such enquiry as is mentioned in section eight of Act No. XXIII of 1861 *(to amend Act VIII of* 1859,) which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to the provisions as to deposit of fees and as to release on security contained in the same section,

Custody pending enquiries under Act XXIII of 1861, section eight.

and the Superintendent is hereby authorized and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under Act No. IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*),

or in pursuance of a warrant issued under section three of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction;

and if such Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

Warrants under Regulations for confinement of State prisoners.

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 (*for the better Custody of State Prisoners*), and Act No. III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

III.—Prisoners in the Mofussil.

Officers in charge of prisons may give effect to sentences of certain Courts.

16. Officers in charge of prisoners situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor-General in Council, or of any Local Government.

Warrant of officer of such Court to be sufficient authority.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

Imprisonment in British India of persons convicted of certain offences in Native States.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences :—

counterfeiting coin,
uttering counterfeit coin,
murder,
culpable homicide not amounting to murder,
being a thug,
voluntarily causing grievous hurt,
administering poison,
kidnapping,
selling minors for purposes of prostitution,
rape,
robbery,
dacoity,
dacoity with murder,
robbery or dacoity with attempt to cause death or grievous hurt,
attempt to commit robbery or dacoity when armed with a deadly weapon,
making preparation to commit dacoity
belonging to a gang of dacoits,
dishonest misappropriation of property,
breach of trust,

house-burning,
house-breaking,
forgery, and
theft of cattle;

or for an attempt to commit any of the above offences,

or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor-General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe:

Proviso.

Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor-General in Council, is one of the presiding Judges.

The provisions of this section have been extended to the offences against the Penal Code mentioned in Schedule II of Act XI, 1872 (now XXI, 1879) India Notification No. 158 J. of 12th August 1872.

Certificate of conviction.

Copy of proceedings.

20. Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

IV.—Convicts sentenced to Penal Servitude.

Persons sentenced to penal servitude where sent, and how dealt with.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor-General in Council by General Order, from time to time, directs;

and may, during such time, be kept to hard labour;

Intermediate imprisonment.

and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

Time of intermediate imprisonment to count in discharge of sentence.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

Power to grant license to convict sentenced to penal servitude.

23. The Governor-General in Council may grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor-General in Council seem fit.

The Governor-General in Council may at any time revoke or alter such license.

Holder of license to be allowed to go at large.

24. So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

Apprehension of convict where license revoked.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

Execution of warrant.

26. Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subse-

quently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

Apprehended convict to be brought up for re-commitment.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of the said license.

Re-commitment.

28. Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

29. If a license be granted under section twenty-three upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

Removal from one jail to another in territories under same Local Government.

30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its con-

trol) the Inspector-General of Prisons, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

Removal of lunatic prisoners.

31. (1) Whenever it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, that Government, by a warrant setting forth the grounds of belief that the person is of unsound mind, may order his removal to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) When it appears to the Local Government that the prisoner has become of sound mind, that Government by a warrant directed to the person having charge of the prisoner, shall, if the prisoner is still liable to be kept in custody, remand him to the prison from which he was removed or to another prison within the territories subject to the same Local Government, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 9 of Act XXXVI of 1858 (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Magistrate or Court to undergo.

(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a

prisoner to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, the Governor-General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council.

Removal of prisoners from territories under one Local Government to territories under another.

32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment, or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India.

Governor-General in Council to appoint places to which persons sentenced to transportation shall be sent.

Local Government to direct removal of such persons to places appointed.

33. The Governor-General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent: and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

As amended by Act IX, 1882.

Central Jails in Bengal have been appointed places to which persons sentenced to transportation may be sent.—*India Gazette* 1870, Pt. I, p. 50.

Power to make rules as to convicts.

34. The Governor-General in Council may, from time to time, prescribe rules as to the following matters:—

the classification of convicts;

their confinement, treatment, discipline, and employment;

their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

DISCHARGE OF CONVICTS.

Discharge of convicts recommended for pardon.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

SCHEDULE.

(*See section* 2.)

Number and year of Act.	Extent of repeal.
VII of 1837 ..	The whole.
XVI of 1840 ...	The whole.
XXIV of 1855 ...	Sections five, six, seven, nine, ten, eleven, and twelve.
XVII of 1860 ...	The whole.
XXV of 1861, VIII of 1869.	Sections forty-nine, forty-nine A, and three hundred and ninety-six.
VIII of 1863 ...	The whole.
VIII of 1865 ...	The whole.
II of 1867 ...	The whole.
XII of 1867 ...	The whole.
XXVI of 1869 ..	The whole.

THE CRIMINAL TRIBES' ACT.

ACT NO. XXVII OF 1871, AS AMENDED BY ACT VII OF 1876.

An Act for the Registration of Criminal Tribes and Eunuchs.

WHEREAS it is expedient to provide for the registration, surveillance, and control of certain criminal tribes and eunuchs; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Criminal Tribes' Act, 1871," and it shall come into force on the passing thereof.

Local extent.

This section and section twenty extend to the whole of British India: the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of [Bengal,] the North-Western Provinces and the Panjáb, respectively, and under the administration of the Chief Commissioner of Oudh.

The word 'Bengal' inserted by Act VII of 1876.

PART I.

CRIMINAL TRIBES.

Local Government to report what tribes should be declared criminal.

2. If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor-General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe.

Report to contain certain particular

3. The report shall state the reasons why such tribe, gang or class is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have

been concerned; and shall describe the manner in which it is proposed that such tribe, gang or class shall earn its living when the provisions hereinafter contained have been applied to it.

Occupation of wandering tribe to be stated; also proposed residence and means of livelihood.

4. If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

Notification declaring tribe to be criminal.

5. If, upon the consideration of any such report, the Governor-General in Council is satisfied that the tribe, gang or class to which it relates ought to be declared criminal, and that the means by which it is proposed that such tribe, gang or class shall earn its living are adequate, he may authorize the Local Government to publish in the local Gazette a notification declaring that such tribe, gang or class is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang or class.

Bar of jurisdiction of Courts in questions relating to notification.

6. No Court of Justice shall question the validity of any such notification on the ground that the provisions hereinbefore contained, or any of them, have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang or class specified therein.

Register of members of such tribes.

7. When the notification mentioned in section five has been published, the Local Government may direct the Magistrate of any district in which such tribe,

gang or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang or class, or of any part thereof.

The declaration of the Local Government that any such tribe, gang or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

Procedure in making register.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

Penalties for failing to appear, refusing or giving false information.

9. Any member of any such tribe, gang or class who, without lawful excuse, the burthen of proving which shall lie upon him,

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first parts of section one hundred and seventy-four or one hundred and seventy-six, or one hundred and seventy-seven of the Indian Penal Code, respectively, as the case may be.

Charge of register.

Reporting desirable alterations.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

By whom alterations to be made.

Notice to persons affected.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

Complaints of entries in register.

12. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered or proposed to be registered, or otherwise.

Settlement of tribe in place prescribed by Local Government.

13. Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

Removal to other place

14. Any tribe, gang or class which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

Arrangements to be made prior to settlement or removal.

15. No tribe, gang or class, shall be settled or removed under the provisions of this Act until such arrangements as the Local Government shall, with the concurrence of the Governor-General in Council, consider suitable, have been made for enabling such tribe, gang or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Transfer of register of persons ordered to be removed.

16. When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the District to which such persons are removed, and the Magistrate of the said District and the Commissioner of the Division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections eleven and twelve.

Power to place tribe in reformatory settlement.

17. The Local Government may, with the sanction of the Governor-General in Council, place any tribe, gang or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement.

Power to make rules.

18. The Local Government may, with the previous consent of the Governor-General in Council, make rules to prescribe—

(1) the form in which the register shall be made by the said Magistrate;

(2) the mode in which the said Magistrate shall publish the notice prescribed in section eight, and the means by which the persons whom it concerns, and the Headmen, Village-Watchmen and landowners or occupiers of the village, in which such persons reside, *or the agents of such landowners or occupiers*, shall be informed of its publication;

(3) the mode in which the notice prescribed in section eleven shall be given;

(4) the limits within which persons whose names are on the register shall reside;

(5) conditions as to holding passes, under which such persons may be permitted to leave the said limits;

(6) conditions to be inserted in any such pass as to

(*a*) the places where the holder of the pass may go or reside;

(*b*) the officers before whom, from time to time, he shall be bound to present himself;

(*c*) and the time during which he may absent himself,

(7) conditions as to answering at roll-call or otherwise in order to satisfy the said Magistrate or persons authorized by him, that the persons whose names are on the register are actually present at given times within the said limits;

(8) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave;

(9) the terms upon which registered persons may be discharged from the operation of this Act;

(10) the mode in which criminal tribes shall be settled and removed;

(11) the control and supervision of reformatory settlements;

(12) the works on which, and the hours during which persons placed in a reformatory settlement, shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit;

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove;

(14) and generally to carry out the purposes of this Act.

The N.-W. P. Rules are in Gazette, 21st March 1874, p. 701; Panjab Rules, Gazette, 13th February 1873, p. 99.

Penalties for breach of rules.

19. Any person violating any of the rules made under section eighteen shall be punished with rigorous imprisonment for a term which may extend to six months or with fine, or with whipping, or with all or any two of those punishments; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.

Arrest of registered person found beyond prescribed limits.

20. Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass,

or who escapes from a reformatory settlement,

may be arrested without warrant by any Police Officer or Village-Watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of Village-Headmen, Village-Watchmen, &c.

21. It shall be the duty of every Village-Headman and Village-Watchman in a village in which any persons belonging to a tribe, class or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, *or of the agent of any such owner or occupier*, to give the earliest information in his power at the nearest Police Station of

(1) the failure of any such person to appear and give information, as directed in section eight;

(2) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every Village-Headman and Village-Watchman in a village, and of every owner or occupier of land, *or of the agent of such owner or occupier*, to give the earliest information in his power at the nearest Police Station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class or gang.

Penalty for breach of such duties.

22. Any Village-Headman, Village-Watchman, owner or occupier of land, *or the agent of such owner or occupier*, who shall fail to comply with the requirements of section twenty-one, shall be deemed to have committed an offence under the first part of section one hundred and seventy-six of the Indian Penal Code.

23. Repealed by Act XII, 1876.

PART II.

EUNUCHS.

Registers of eunuchs and their property.

24. The Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, it appoints in this behalf:—

(*a*) a register of the names and residences of all eunuchs residing in any town or place to which the Local Govern-

ment specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offences, and

(*b*) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

'Eunuch' defined.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

Complaints of entries in register.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase it, or retain it, as he sees fit.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

Penalty on registered eunuch appearing in female clothes;

26. Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place,

or dancing in public, or for hire.

or who dances or plays music, or takes part in any public exhibition, in a public street or place or for hire in a private house,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Penalty on registered eunuch keeping boy under sixteen.

27. Any eunuch so registered who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years or with fine, or with both.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section twenty-seven may be employed in defraying the cost of such arrangements.

Maintenance and education of boys whose parents cannot be found.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed.

Disabilities of registered eunuchs.

29. No eunuch so registered shall be capable—

(a) of being or acting as guardian to any minor,

(b) of making a gift,

(c) of making a will, or

(d) of adopting a son.

30. Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether moveable or immoveable, of or to which he is possessed or entitled, or which is held in trust for him.

Power to require information as to registered eunuch's property.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true, information, on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offence under section one hundred and seventy-six or one hundred and seventy-seven of the Indian Penal Code, as the case may be.

Penalty for refusing such information.

31. The Local Government may, with the previous sanction of the Governor-General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.

Rules for making and keeping up registers of eunuchs.

THE INDIAN OATHS ACT.

ACT NO. X OF 1873.

An Act to consolidate the law relating to Judicial Oaths and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Oaths Act, 1873:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty;

Commencement.

And it shall come into force on the first day of May 1873.

Repeal of enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils' Act, 1861, the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a.) All Courts and persons having by law or consent parties authority to receive evidence;

(*b.*) The Commanding Officer of any Military Station occupied by troops in the service of Her Majesty : provided

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons :—

witnesses :

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence :

interpreters :

(*b*) interpreters of questions put to, and evidence given by, witnesses, and

jurors.

(*c*) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindoo or Mahomedan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror, shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section five shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the

Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

See notes under s. 354, C. P. C.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section eight, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section eight, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

The section includes any omission and is not limited to accidental or negligent omissions.—14 B. L R., 294.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Amendment of Penal Code, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

Official oaths abolished.

16. Subject to the provisions of sections three and five, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE. (*See section* 2.)

PART I.—STATUTES.

Year and chapter	Extent of Repeal.
9 Geo. IV, c 74	Sections thirty-six and thirty-seven.
3 & 4 Wm. IV, c. 49.	The whole Act, so far as it applies to British India.
3 & 4 Wm. IV, c. 82.	The whole Act, so far as it applies to British India.
5 & 6 Wm. IV, c. 62	The whole Act, so far as it applies to British India.
1 & 2 Vic., c. 77	The whole Act, so far as it applies to British India.

PART II.—ACTS.

Number and year.	Extent of Repeal.
IX of 1836	The whole.
XXI of 1837	So much as has not been repealed.
V of 1840	So much as has not been repealed.
XV of 1843	Section two.
XV of 1852	Section twelve.
XII of 1856 ...	Section four.
VII of 1857 ...	Section two.
XII of 1859 ...	Sections twelve and fifteen.
XVIII of 1863...	Section nine.
IV of 1866 ...	Section five.
II of 1869 ...	Sections seven and eight.
IV of 1871 ...	Section seven, and, in section thirty-eight, the words "and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of his office."
VI of 1871 ...	Section thirteen.
VI of 1872 ...	The whole.
XVIII of 1872...	Section twelve.
Bombay Act VI of 1866.	The whole.

PART III.—REGULATIONS.

Number and year.	Extent of Repeal.
Bengal Regulation IV of 1793.	So much of section six as has not been repealed.
Bengal Regulation III of 1803.	So much of section seven as has not been repealed, and section eight.
Bengal Regulation IX of 1833.	Section nineteen.
Madras Regulation I of 1803.	Sections two and three.
Madras Regulation II of 1803.	Sections three and four.
Madras Regulation XIV of 1816.	Section five.
Bombay Regulation VI of 1799.	Section two, clause two, from and including the words "Previous to" down to the end of that clause.

PART III.—REGULATIONS—*continued.*

Number and year.	Extent of Repeal.
Bombay Regulation II of 1827.	Sections four and fifteen. In section eleven, clause one, the words "who previously to entering on the duties of their offices shall take and subscribe in open Court the oath contained in Appendix B." Appendix B.
Bombay Regulation XII of 1827.	So much of section three, clause five, as has not been repealed.
Bombay Regulation XIII of 1827.	So much of section thirty-six, clause two, as has not been repealed.
Bombay Regulation XVI of 1827.	Section three, and so much of section five as relates to taking oaths.
Bombay Regulation XIX of 1827.	Section one, clause two; and section six from and including the words "and shall" down to the end. Appendix A.
Bombay Regulation XVIII of 1830.	Section two.

THE EUROPEAN VAGRANCY ACT.

ACT NO. IX OF 1874.

An Act to consolidate and amend the Law relating to European Vagrancy.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The European Vagrancy Act, 1874 :"

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty,

Commencement.

And it shall come into force at once: Provided that sections four to sixteen (both inclusive), nineteen, twenty, twenty-four and twenty-nine shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Repeal of Acts.

2. Acts No. XXI of 1869 *(to provide against European Vagrancy)* and No. XXVIII of 1871 *(to amend the European Vagrancy Act*, 1869) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed, and granted under this Act.

See Notification No. 4828, dated 20th October 1870.

Interpretation-clause. "Person of European extraction."

3. In this Act—

"Person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony,

(*b*) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians:

"Vagrant."

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

Master of a ship.

"Master of a ship" includes any person in charge of a decked vessel:

Magistrate.

And in Parts III and V of this Act "Magistrate" means, within the limits of the Towns of Calcutta, Madras and Bombay, a Magistrate of Police, and outside those limits a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class.

PART II.

PROCEDURE.

Power to require apparent vagrant to go before Magistrate.

4. Any Police Officer may, within the limits of the Towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police Officer, to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police Officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

Summary inquiry into vagrant's circumstances.

Declaration of vagrancy.

5. The Magistrate of Police or Justice of the Peace shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go to work-house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government Work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the Work-house for receiving and detaining such vagrant.

Forwarding vagrant to place of employment.

6. Where the officer making the inquiry mentioned in section five is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section one) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place

in charge of the Police, and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government Work-house in the manner provided by section five.

Subsistence allowance.

8. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under section five, to the work-house, or, under section six, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police or Justice of the Peace, before whom any vagrant is taken under section seven, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

Power to give certificate.

9. Any Magistrate of Police or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate and within certain limits (mentioning them), nothing in sections four, five, six, and seven shall apply to the holder

of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections four, five, six, and seven shall apply to such person within such limits as aforesaid.

Form of certificates.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Power to invest certain officials with jurisdiction of Justices under secs. 5, 7, 8 and 9.

10. The Local Government may, from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.

GOVERNMENT WORK-HOUSES.

Provision of Government Work-houses.

11. The Local Government, with the previous sanction of the Governor-General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government Work-house under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendenc of work-houses.

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

Search of vagrants.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages, and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules or management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor-General in Council.

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely)—

(*a*) solitary confinement within the work-house for any time not exceeding seven days ;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe ;

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days;

Or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours

to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

Cost of removal.

or it may cause sections twenty-three and thirty to be read to him and may then release him.

Agreements with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Form of agreement.

Every such agreement shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

As amended by Act I, 1879, Sched. III.

18. The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

Power to perform agreement.

PART V.

PENALTIES.

19. Any person refusing or failing to accompany a Police Officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section four, may be arrested without warrant and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Refusal to go before Magistrate.

And any person who, when required under section four to accompany a Police Officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under section three hundred and fifty-three of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence.

Assaulting Police.

20. Any vagrant who escapes from the Police while committed to their charge under the orders specified in sections five and six,

Escaping from Police.

or who leaves a work-house, under this Act, without permission from the Governor,

Quitting work-house without leave. Failing to return to work-house.

or who having with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section seventeen, and failing to proceed in pursuance thereof to the port therein mentioned,

Failing to proceed to port of embarkation.

BENGAL SECRETARIAT LIBRARY

Refusing to go on boardship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on close of imprisonment.

24. Every person imprisoned under section nineteen, twenty, twenty-one, twenty-two or twenty-three, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections five and six.

The order of transmission shall certify the fact of the previous conviction.

Penalty on shipmaster bringing European convicts to India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of

Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain shipmasters.

The Governor-General in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor-General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

The Governor-General in Council may in like manner revoke any exemption made under this section.

Recovery of fines.

26. All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being.

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor-General in Council from time to time directs.

Prosecutions.

27. All prosecutions under this Act may be instituted and conducted by such officer as the local Government from time to time appoints in this behalf.

Limits of jurisdiction.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section twenty-four, was not the nearest.

Validity of proceedings where Magistrate is not the nearest.

PART VI.

MISCELLANEOUS.

30. Any European British subject who, upon the summary enquiry mentioned in section five, has been determined to be a vagrant, or who has been convicted under section twenty-two or section twenty-three, shall, so long as he remains in India, be subject beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII of the same Code) applicable to an European not being a British subject.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

31. Whenever any person of European extraction lands in India, or, being a Non-Commissioned Officer or Soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

Liability of importers of Europeans or employers of soldiers becoming vagrants.

and whenever a sailor of European extraction not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person,

or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then,

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found,

the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

'Consignee' defined.

For the purposes of this section 'Consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Agent defined.'

'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

Evidence of declaration under section 5.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section five, shall be *primâ facie* evidence that the European British subject named therein has been, upon the summary enquiry

mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Exercise of powers conferred on Local Government.

34. The powers and duties conferred and imposed by sections sixteen and eighteen, on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and Police officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Power to make rules for guidance of officers.

36. The Governor-General in Council may from time to time make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

The following Rules were promulgated by Notification No. 4828, dated 20th October 1870. They are kept in force by s. 2 of the Act.

In the exercise of the power vested in him by section 34 of Act XXI of 1869 (an Act to provide against European Vagrancy), His Excellency the Governor-General in Council is pleased to make the following Rules for the guidance of Officers in the administration of the Act:—

I.—The expression "person of European extraction" includes, for the purposes of the Act and these Rules, (1) persons born in Europe, America, the West Indies, Australia, and New Zealand; and (2) the legitimate son of a father and grandson of a grandfather so born.

II.—For the arrest and custody of vagrants, European or Eurasian, Police-officers shall, whenever it may be practicable, be employed in preference to Native Police-officers.

III.—Whenever any person, apparently a vagrant, refuses or fails to comply with any requisition made by a Police-officer under section 4 of the Act,

whenever any person of European extraction commits an offence under section 23 of the Act in view of a Police-officer,

and whenever any Police-officer has reason to think that such offence has been, or is being, committed,

the person so refusing, failing or offending, may be forthwith arrested, without warrant, by the Police-officer, for the purpose of being produced in the usual manner before the Officer empowered to deal with the case.

IV.—The "subsistence allowance" of the vagrant shall not ordinarily be made over to him, but shall be kept and disbursed on his account by the Police or other Officer in whose custody he is for the time being.

V.—No certificate shall be given under section 9, unless there be good ground for believing that the person applying for it is *bonâ fide* in search of employment, has a fair chance of obtaining it, and is of quiet and orderly behavior.

VI.—The certificates shall be printed on parchment or paper of very durable character, and shall be in English, with translations in the two principal Vernacular languages of the territories under the Local Government.

VII.—The time allowed under section 16 for search after employment, shall not ordinarily exceed two months, and shall not in any case exceed six months.

VIII.—In the Presidency-towns, the Commissioner of Police, and elsewhere, Magistrates with full powers, being also Justices of the Peace, shall be competent to act on behalf of the Secretary of State in Council in making agreements under section 17.

IX.—All such agreements shall be executed in duplicate, and the officer executing on behalf of the Secretary of State in Council shall retain one of the copies.

X.—When an agreement has been entered into by a vagrant under section 17, he shall be forwarded, along with the original agreement, in the charge of a Police-officer, to the Officer at the port of embarkation, who is empowered by the Local Government to receive vagrants; and thereafter, and until his embarkation, he shall remain in the custody of that Officer, or of such other Officer as the Local Government empowers in this behalf.

He shall during such time be entitled to subsistence allowance at eight annas per diem, to be disbursed as directed in Rule IV.

XI.—Local Governments within whose jurisdiction ports are situated shall make all necessary arrangements for the reception and custody of vagrants sent for deportation by other Local Governments or authorities in the interior. They will, from time to time, as may be necessary, give notice of such arrangements to the forwarding authorities.

XII.—Road expenses shall be provided by the forwarding authority. All further expenses incurred in proceedings under Chap. IV of the Act shall be defrayed by the Local Government of the port of embarkation on account of the Secretary of State in Council.

XIII.—No agreement for deportation shall be entered into with any person of European extraction born in this country, and who has never been out of it, unless he satisfies the Local Government that he is likely to gain a livelihood in some place out of India.

XIV.—The Officers empowered to direct the deportation of vagrants will see that no unnecessary time is lost for providing passage for those who have entered into agreements to be deported. As a rule, Europeans should be sent to Europe, Americans to America, West Indians to the West Indies, Australians to Australia, and New Zealanders to New Zealand. But the local authorities will exercise their discretion in sending vagrants to other countries than their own, when it appears that such a course will be for their advantage, and that they will be favourably received on arriving at their destination.

XV.—Descriptive rolls, and, as far as possible, photographs of all persons deported, shall be kept by the Local Governments or Administrations within whose territory the ports are situated.

THE FIRST SCHEDULE.

(*See section* 9.)

WHEREAS *E. F.* of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, these are to certify that for the space of months from the date hereof and within the Province [*or* District] of nothing in sections four, five, six and seven of the same Act shall be deemed to apply to him, unless he is found asking for alms, in which case this certificate shall be void.

(Signed) *G. H.*

Dated this day of 18 .

Magistrate of Police for the Town of *or* Justice of the Peace for exercising the powers of a Magistrate of the class.

THE SECOND SCHEDULE.

(*See section* 17.)

ARTICLES OF AGREEMENT made this day of 18 between the Secretary of State for India in Council of the one part and *C. D.* of, &c. [*the vagrant*], of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* (by order of the Governor-General of India in Council [*or* the Governor of in Council *or* the Lieutenant-Governor of , *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

THE REFORMATORY SCHOOLS ACT,

BEING ACT NO. V OF 1876.

An Act to provide Reformatory Schools.

Preamble.

WHEREAS it is expedient to provide Reformatory Schools for male youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Reformatory Schools Act, 1876:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force in each Province of British India on such day as the Local Government by notification in the official Gazette directs in that behalf.

See 29 and 30 Vic., c. 117.

Section 318 of Code of Criminal Procedure repealed.

2. On and from that day section 318 of the Code of Criminal Procedure shall be repealed therein.

Interpretation-clause.

3. In this Act—

"Youthful offender."

"Youthful offender" means any boy who, being at the time under the age of sixteen years, has been convicted of any offence punishable with imprisonment or transportation:

"Inspector-General."

"Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector of Jails.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

4. With the previous sanction of the Governor-General in Council, the Local Government may—

(*a*) establish Reformatory Schools at such places as it thinks fit,

(*b*) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules consistent with this Act as the Local Government may from time to time prescribe in this behalf,

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of school.

5. Every school so established or used must provide—

(*a*) sufficient means of separating the inmates at night;

(*b*) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(*c*) the means of giving such offenders industrial training;

(*d*) an infirmary or proper place for the reception of such offenders when sick.

Inspection of schools.

6. Every Reformatory School shall, before being used as such, be inspected by the Inspector-General of Jails, and if he reports that the requirements of section five have been complied with and that in his opinion such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate

shall be published in the local official Gazette, and the school shall thereupon be deemed a Reformatory School.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

Power of Courts to direct youthful offenders to be sent to Reformatories.

7. Whenever any youthful offender is sentenced to transportation or imprisonment, and is in the judgment of the Court by which he is sentenced (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, the Court may direct that, instead of undergoing his sentence, he shall be sent to a Reformatory School, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

The powers so conferred on the Court shall be exercised only by (*a*) the High Court, (*b*) the Court of Session, (*c*) a Magistrate of the first class, and (*d*) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras and Bombay.

Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatories.

8. Whenever any youthful offender under the age of sixteen years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such Jail is situate; and the Magistrate, if he thinks the offender (*a*) under the age of sixteen years and (*b*) a proper person to be an inmate of a Reformatory School, may direct him to be sent to a Reformatory School, and to be there detained for a period which shall be not less than two and not more than seven years and which shall be in conformity with any rules made under section twenty-two and for the time being in force.

"Magistrate" defined.

In this section "Magistrate" means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the first class.

9. Every youthful offender so directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.

Government to determine Reformatory to which such offender shall be sent.

10. Nothing contained in section seven, eight or nine shall be deemed to authorize the detention in a Reformatory School of any person after he is proved to be above the age of eighteen years.

Boys above eighteen not to be detained in school.

11. The Local Government may at any time order any youthful offender—

Discharge or removal by order of Government.

(*a*) to be discharged from a Reformatory School;

(*b*) if so discharged before the expiration of his sentence, to undergo the residue of such sentence at such place as the Local Government thinks fit; or

(*c*) to be removed from one Reformatory School to another such school situate within the territories subject to such Government, but so that the whole period of his detention in a Reformatory School shall not be increased by such removal.

III.—Management of Reformatory Schools.

12. For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

Appointment of Superintendent and Committee of Visitors or Board of Management.

Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

The Local Government may from time to time suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

13. Every Superintendent so appointed may permit any youthful offender sent to a Reformatory School who has attained the age of fourteen years, by license under his hand, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality,

Superintendent may license youthful offenders to employers of labour.

being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation or calling.

The license shall be in force for three months and no longer, but may, at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

Cancellation of license.

14. The license shall be cancelled at the desire of the employer named in the license;

If complaint of employers just, no fresh license until expiry of twelve months.

and if it appears to the Superintendent that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

Determination of license.

15. If during the term of the license the employer named therein die, or cease from business, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of ill-treatment.

16. If it appears to the Superintendent that the employer has ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintendent to be deemed guardian of youthful offenders.

17. The Superintendent of any Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*),

Power to apprentice youthful offender.

and if it appear to the Superintendent that any such offender licensed under section thirteen has behaved well during one or more periods of his license, the Superintendent may apprentice him under the provisions of the said Act, and on such apprenticement the right to detain such offender in the school shall cease and the unexpired term (if any) of his sentence shall be cancelled.

Duties of Committee of Visitors.

18. Every Committee of Visitors appointed under section twelve for any Reformatory School shall, at least once in every month,

(*a*) visit the school, to hear complaints and see that the requirements of section five have been complied with, and that the management of the school is proper in all respects,

(*b*) examine the punishment-book,

(*c*) bring any special cases to the notice of the Inspector-General, and

(*d*) see that no person is illegally detained in the school.

Powers of Board of Management.

19. If in exercise of the power conferred by section twelve, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections thirteen to seventeen, both inclusive; and the license mentioned in section thirteen may be under the hand of their chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

20. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section four, clause (*b*), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power of Board to make rules.

21. With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

(*a*) the conduct of business of the Board,

(*b*) the management of the school,

(*c*) the education and industrial training of youthful offenders,

(*d*) visits to and communication with youthful offenders,

(*e*) punishments for offences committed by youthful offenders,

(*f*) the granting of licenses for employment of youthful offenders.

In the absence of a Board of Management, the Local Government may from itme to time make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in clauses (*b*), (*c*), (*d*), (*e*) and (*f*) of this section, and also the mode in which the Committee of Visitors shall conduct their business.

Power of Government of India to make rules.

22. The Governor-General in Council may from time to time make rules consistent with this Act for regulating the periods for which Courts and Magistrates may send youthful offenders to Reformatory Schools according to their ages, the nature of their respective offences, or other considerations.

All rules made under this section shall be published in the *Gazette of India*.

Under this section the following rules have been made:—

Rule I.—No boy shall be sent to a Reformatory School on a first conviction (except as provided in Rule III), if under ten years of age, for a less period than five years; if over ten, for a less period than three years, unless he shall sooner attain the age of eighteen.

Rule II.—On a subsequent conviction for a similar offence, a boy under ten years of age shall not be sent to a Reformatory School for a less period than seven years; if over ten, for a less period than five years, unless he shall sooner attain the age of eighteen.

Rule III.—A first conviction may bring a boy under Rule II—

(1) If he belongs to a criminal tribe within the meaning of Act XXVII of 1871, sec. 2;
(2) If either of his parents is an habitual criminal;
(3) If he is destitute; and
(4) If the offence of which he is convicted is one arguing great depravity.*

* The word "depravity" here means a general corruption of morals apart from the specific criminality of the particular act.

India Notification No. 340 of 13th March 1878.

Children under eleven years of age should not ordinarily be sent to a Reformatory, unless they belong to a criminal tribe or come of parents habitually criminal. In the latter cases the minimum limit of age should be eight years. Where possible, boys should not be sent to a Reformatory for a less period than four years.

Beng. Circ. No. 46P, dated 12th September 1882.

IV.—Offences in relation to Reformatory Schools.

Penalty for abetting escape of youthful offender.

23. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may

extend to six months, or with fine not exceeding one hundred rupees, or with both.

Arrest of escaped youthful offenders.

24. A Police officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school, or from his employer, and take him back to such school or to his employer.

INDIAN REGISTRATION ACT.

ACT III OF 1877, AS AMENDED BY ACT XII, 1879.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both:

Making false statements before registering officer.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act;

Delivering false copy or translation.

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan;

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act;

False personation.

(d) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Abetment of offences under this Act.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

Registering officer may commence prosecutions.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class:

Provided that in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered, if for offences committed outside the limits of the Presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns for the time being in force.

The words "Magistrate of the second" in the second paragraph of the section have been substituted for "Subordinate Magistrate of the first" by s. 106, Act XII, 1879.

84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words 'judicial proceeding' shall include any proceeding under this Act.

A Registrar shall, but a Sub-Registrar shall not, as such, be deemed a Court within the meaning of sections 435 and 436 of the Code of Criminal Procedure.

See s. 483, C. P. C.

THE INDIAN ARMS ACT.

ACT NO. XI OF 1878.

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

Local extent.

1. This Act may be called "The Indian Arms Act, 1878"; and it extends to the whole of British India.

Savings.

But nothing herein contained shall apply to—

(*a*) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer.

Commencement.

2. This Act shall come into force on such day as the Governor-General in Council by notification in the *Gazette of India* appoints.

Repeal of enactments.

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be

respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

"Cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

"Arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"Ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, guncotton, dynamite, lithofracteur and other explosive or fulminating material, gunflints, gunwads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre:

"Military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor-General in Council may, from time to time, by notification in the *Gazette of India*, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor-General in Council may from time to time so extend such section:

"License" means a license granted under this Act, and "licensed" means holding such license:

II.—MANUFACTURE, CONVERSION AND SALE.

Unlicensed manufacture, conversion and sale prohibited.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section twenty-seven of this Act shall, without unnecessary delay, give to the Magistrate of the District, or to the officer in charge of the nearest Police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

Unlicensed importation and exportation prohibited.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license.

Importation and exportation of arms and ammunition for private use.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another, by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section.

Sanction of Local Government required to warehousing of arms, &c.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

[Section 8 repealed by Act XI, 1882.]

Power to impose duty on import by land.

9. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, direct that duties not exceeding those specified in the second schedule hereto annexed shall be levied upon any articles mentioned in that schedule and brought by land into any part of British India, and may in like manner cancel any such notification.

Power to prohibit transport.

10. The Governor-General in Council may from time to time, by notification in the *Gazette of India*,—

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent and in the manner permitted by such license, and

(*b*) cancel any such notification.

Transhipment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Power to establish searching stations.

11. The Local Government, with the previous sanction of the Governor-General in Council, may, at any places along the boundary-line between British India and Foreign territory, and at such distance within such line as it deems expedient, establish searching-ports at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Arrest of persons conveying arms, &c., under suspicious circumstances.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Any person so apprehended, and any arms, ammunition or military stores so taken, by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

Procedure where arrest made by person not a Magistrate or a Police-officer

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—GOING ARMED AND POSSESSING ARMS, &c.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby.

Unlicensed possession of fire-arms, &c.

During the three months next following the date on which this Act comes into force, nothing in the former part of this section shall apply to the possession by any person of any fire-arms, ammunition or military stores in any place to which section 32, clause 2, of Act No. XXXI of 1860 does not apply at such date.

Any person having within the said period of three months any fire-arms, ammunition or military stores in his possession in any such place may, and any person having at the expiry of the same period any fire-arms, ammunition or military stores in his possession in any such place without a license shall, deposit the same with the officer in charge of the nearest Police-station.

If the owner of anything deposited under this section does not, within the year next following the date on which this Act comes into force, obtain a license authorizing him to possess such thing and apply for delivery of the same, such things shall be forfeited to Her Majesty.

Possession of arms of any description without license prohibited in certain places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor-General in Council, may by notification in the local official Gazette specially extend this section, no person shall have in his possession any arms of any description except under a license and in the manner and to the extent permitted thereby.

Arms of which possession has become unlawful to be deposited at Police-station.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license, or by the issue of a notification under section fifteen, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest Police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

V.—LICENSES.

Power to make rules as to licenses.

17. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, make rules to determine the officers by whom, the form in which and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record

or account when called upon by an officer of Government to do so;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section five or section six;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered, and

(*f*) require the person holding any license, or acting under any license, to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

The rules framed under this section are contained in notification No. 578, dated 6th March 1879 (*Gazette of India*, 12th March 1879, Part I, page 142).

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—PENALTIES.

For breach of sections 5, 6, 10, 13 to 17.

19. Whoever commits any of the following offences (namely):—

(*a*) manufactures, converts or sells, or keeps, offers or

exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section five;

(*b*) fails to give notice as required by the same section;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of section six;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section ten;

(*e*) goes armed in contravention of the provisions of section thirteen;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section fourteen or section fifteen;

See section 29. Proceedings cannot be instituted under this clause without the previous sanction of the Magistrate of the District. See also section 30.

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section seventeen, clause (*c*), he is required to keep;

(*h*) intentionally fails to exhibit any thing which, by a rule made under section seventeen, clause (*e*), he is required to exhibit; or

(*i*) fails to deposit arms, ammunition or military stores, as required by section fourteen or section sixteen,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

A gun-barrel and nipple in serviceable condition fall within the definition of "arms" in s. 4. Therefore, the possession of such articles without a license is punishable under s. 19 (*f*) of the said Act.—I. L. R., 7 Mad., 70.

There is another ruling that a gun rendered unserviceable by the loss of the trigger requires no license.—I. L. R., 6 Mad., 60.

The possession of gunpowder without a license, whether intended for the manufacture of fireworks or not, is an offence under s. 19 of the Arms Act.—I. L. R., 8 Mad., 202.

What the Court ruled in *R.* v. *Suppi* (I. L. R., 5 Mad., 59) was that if the powder, when it came to the possession of a person charged under the Act, had been actually made up into fireworks, an offence would not be committed.

For secret breaches of sections 5, 6, 10, 14 and 15.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of section nineteen, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian

Penal Code, or to any person employed upon a Railway or to the servant of any public carrier,

For concealing arms, &c.

and whoever, on any search being made under section twenty-five, conceals or attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

For breach of license.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section nineteen or section twenty, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, &c., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section five to sell the same; or

For delivering arms, &c., to person not authorized to possess them.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to

convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

VII.—Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

Seizure and detention by Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Power to exempt.

27. The Governor-General in Council may from time to time, by notification published in the *Gazette of India*,

(*a*) exempt any person by name or in virtue of his office or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(*b*) cancel any such notification, and again subject the persons or things, or the part of British India, comprised therein to the operation of such prohibition or direction.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regardingany box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Information to be given regarding offences.

29. Where an offence punishable under section nineteen, clause (*f*), has been committed within three months from the date on which this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District, or, in a Presidency-town, of the Commissioner of Police.

Sanction required to certain proceedings under section 19, cl. (*f*).

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877, in the course of any proceedings instituted in respect of an offence punishable under section nineteen, clause (*f*), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Searches in the case of offences against section 19, clause (*f*), how conducted.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punish-

Operation of other laws not barred.

ment or penalty than that provided by this Act: provided that no person shall be punished twice for the same offence.

Power to take census of fire-arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him, if he so requires.

Any person refusing or neglecting to produce any such arms, when so required, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year	Extent of repeal.
XVIII of 1841.	So much as has not been repealed.
XXX of 1854.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into Foreign States should be prohibited." Section 11.
XXXI of 1860.	So much as has not been repealed.
VI of 1866	The whole.
III of 1872.	So much of the schedule as relates to Act XXXI of 1860 and Act VI of 1866.
IX of 1874	So much of the schedule as relates to Act XVIII of 1841.
XV of 1874.	So much of the first schedule as relates to Act XVIII of 1841.

STAMP ACT.

ACT NO. I OF 1879.

Penalty for executing, &c., instrument not duly stamped.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill-of-exchange, cheque or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Held, that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s. 29, Act XVIII of 1869, had any intention to defraud by evading payment of stamp-duty.—I. L. R., 2 Calc., 399.

But the judgment of the Court goes on to state that the Magistrate is bound to record a conviction, provided it is proved that there has been a making, &c., of an unstamped or insufficiently stamped instrument, and that the amount of the fine only is left entirely to his discretion.

There are many offences irrespective of intention. See Maxwell on Statutes, p. 80, *e. g.*,—offences under Cotton Frauds Act in Bombay, under Game Laws in England. Laws for the protection of the revenue are intentionally strict.—*e. g.*, Salt, Excise, Opium, and Post Office Laws. Under s. 61 of Act VII of 1878 (B. C.), a person who is found in possession of any greater quantity of any excisable article than he is allowed to possess under the law is liable to a fine of Rs. 100. It would be no answer to a prosecution for such person to state that he had no intention to break the law. *Ignorantia legis neminem excusat.*

Mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of such an instrument.—I. L. R., 7 Bom., 82.

"Accepting" does not mean receiving, but "executing as acceptor" —I. L. R., 7 Mad., 71.

THE INDIAN RAILWAY ACT.

ACT NO. IV OF 1879.

An Act to consolidate and amend the law relating to Railways in India.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short-title.

1. This Act may be called "The Indian Railway Act, 1879:"

Local extent.

It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty;

Commencement.

And it shall come into force on the first day of July, 1879.

Repeal of Acts.

2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.

All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.

Nothing in the Carriers Act, 1865, shall apply to carriers by railway.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Railway."

"Railway" means a Railway for the public conveyance of passengers or goods:

It includes—

(a) all land within the fences or other boundary-marks prescribed under section fifty-two;

(*b*) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway;

(*c*) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway;

(*d*) all vessels and rafts used for the purpose of carrying on the traffic of a Railway.

In section four, "Railway" includes a Railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty-three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, "Railway" includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods:

"Railway-Administration" means, in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual:

"Railway-Administration."

"Railway-servant" means any person employed by a Railway-Administration to perform any function in connection with a Railway,

"Railway-servant."

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor-General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

Right to use locomotives.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor-General in Council notice in writing of the intention of

Railway when to be opened.

opening the same, and until an officer appointed by the Governor-General in Council to inspect such Railway, portion, extension or addition has after inspection thereof, reported in writing to the Governor-General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.

Accidents to be reported.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of—

(a) any accident attended with loss of human life or serious injury to person or property,

(b) any accident of a description usually attended with such loss or injury, and

(c) any accident of any other description which the Governor-General in Council may, from time to time, direct to be notified,

give notice thereof to the Local Government;

and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall, without unnecessary delay, give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs, or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

Returns of accidents.

7. Every Railway-Administration shall make up and deliver to the Governor-General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor-General in Council from time to time directs.

General rules for working Railway.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say):

(a) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled;

(b) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon;

(*c*) for regulating the provision to be made for the accommodation and convenience of passengers;

(*d*) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods; and

(*e*) generally for regulating the travelling upon, and the use, working and management of, the Railway;

and may from time to time alter any such rules.

Penalty for breach of rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor-General in Council.

Notification of rules.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor-General in Council, from time to time, directs.

Power to cancel rules.

The Governor-General in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations.

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor-General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

Special contract limiting liability.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act, 1872, sections 151 and 161, in the

case of loss, destruction or deterioration of, or damage to property shall, in so far as it purports to limit such obligation or responsibility, be void unless—

(*a*) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(*b*) is otherwise in a form approved by the Governor-General in Council.

No liability for loss of gold, silver, &c., unless value declared and increased charge accepted.

11. When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

No liability for unbooked luggage.

12. A carrier by Railway shall in no case be answerable for loss, destruction and deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

Plaintiffs not required to prove negligence.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

Lien for money due for carriage, &c., of property.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property, or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property, or, if the same have been removed

from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto;

or such carrier may recover any such sum by suit.

Written account of property to be given on demand.

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse, for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

Dangerous goods.

16. No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

Passengers on payment of fares to be furnished with tickets.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare; and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets.

Tickets to be shown and given up on demand.

Fares and tickets at intermediate stations.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

Preferential right of ticket-holders.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets:

Proviso.

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government, who, by virtue of any contract with the Government or in the case of a Railway worked by Government, of any direction of the Governor-General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

Fares to be prepaid.

19. Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

Power to remove persons suffering from infectious disease.

20. Any passenger found suffering from an infectious disease in a Railway carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant;

any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(*A*).—*Offences by the Railway-Administration.*

Penalty for opening railway in contravention of section 5.

21. Any Railway-Administration opening, in contravention of section five, any Railway, or any portion or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

For omitting to report accident.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

For not sending return of accidents or making rules under section 8, or exhibiting copy under section 9.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any ab-

stract or copy mentioned in section nine in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues.

(B).—Offences by Railway-servants.

For omitting to give notice of accident.

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees.

For drunkenness or breach of duty.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty,

or who negligently omits to perform his duty,

or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For endangering the safety of persons.

26. If any Railway-servant in the discharge of his duty endangers the safety of any person—

(*a*) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight; or

(*b*) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

For receiving bribes.

27. Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

Amendment of Penal Code, section 161.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

For compelling passengers to enter carriages already full.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—Offences by Persons generally.

For not giving account of goods or giving false account.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property; and such fine shall be in addition to any charge to which such property may be liable.

For taking dangerous goods on Railway or delivering such goods without notice.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

For travelling without ticket or not showing or delivering up ticket.

31. Any passenger travelling on a Railway without a proper ticket or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were

a fine, and shall, when recovered, be paid to the Railway-Administration.

For evading payment of fare.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

(*a*) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(*b*) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(*c*) by using or attempting to use a ticket on any day for which such ticket is not available;

(*d*) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

For altering ticket.

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one, and shall, when recovered, be paid to the Railway-Administration.

For entering carriage in motion.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit any carriaige upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees;

For riding on the steps.

and any passenger who rides, or attempts to ride, on the steps or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

For riding on engine, tender, &c.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway;

or in or upon any vehicle not appropriated to the carriage of passengers,

shall be punished with fine which may extend to one hundred rupees.

For smoking.

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway-carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For intoxication or nuisance.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and, where he has paid his fare and obtained a ticket shall forfeit such fare and ticket.

For entering carriage or room reserved for females.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the Railway, by any Railway servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

For obstructing Railway-servant in his duty.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

For entering carriage already full.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

shall be punished with fine which may extend to one hundred rupees.

For removing signals or injuring carriage, &c.

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be immediately removed from such Railway by such servant or other person as aforesaid.

For trespass. For refusing to leave on request.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine, which may extend to ten rupees for each animal, in addition to any

For cattle-trespass within Railway fences.

amount that may be recovered under the Cattle-Trespass Act, 1871.

For wilfully driving cattle on fenced Railway;

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

on unfenced Railway.

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purposes,

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

Recovery of fines and payment of compensation.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle-Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

Amendment of Act I of 1871, ss. 1 and 26.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section eleven.

For opening or not properly shutting gates.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railways across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take any vehicle, animal or other thing, across the Railway;

and whoever at any time, in the absence of a gate-keeper, omits to shut and fasten such gate as soon as he and any vehicle, animal, or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

For minors obstructing line or throwing stones at train.

44. Whenever any minor under twelve years of age unlawfully—

(a) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(b) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent-way of Railway, or

(c) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section to do shall be punished with fine which may extend to fifty rupees.

For wilful act or omission endangering persons on Railway.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transportation (or, in the case of an European or American, penal servitude) for a term of not less than seven years, or with imprisonment for a term which may extend to ten years.

For rash or negligent act.

46. Whoever rashly or negligently does any act, or omits to do, what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be

punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Disobedience of omnibus, &c., drivers to Railway-servants.

47. Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(*D*).—*Arrest of Offenders.*

Arrest for offence punishable under this Act of offender whose name is unknown, &c.

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond, or his name and address are unknown and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant, or Police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

Arrest for offences against certain sections.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and forty-six may be arrested without any warrant or written authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(*E*).—*Jurisdiction.*

Magistrates having jurisdiction.

50. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Place of trial.

Any person committing any offence against this Act or the Rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette, and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(*F*).—*Saving of other Criminal Laws.*

Saving of prosecutions under other laws.

51. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

CHAPTER VI.

MISCELLANEOUS.

Power of Government to make rules as to fences, gates and bars.

52. The Governor-General in Council, or the Local Government with the previous sanction of the Governor-General in Council, may, from time to time, make rules requiring—

(*a*) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(*b*) that gates or bars be erected at places where any Railway crosses a road on the level; and

(*c*) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section,

shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

Power to declare Local Government in respect of any Railway.

53. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare what Government or other authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

Power to extend Act to steam-tramways.

54. The Governor-General in Council may, by notification, extend this Act or any portion thereof, to any tramway worked by steam.

THE FIRST SCHEDULE.

ACTS REPEALED. (*See section* 2.)

Number and year.	Title.
XVIII of 1854 ..	An Act relating to Railways in India.
XXXI of 1867 ..	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(*See section* 11.)

(*a*) Gold or silver, coined or uncoined, manufactured or unmanufactured;
(*b*) plated articles;
(*c*) cloths and tissue and lace of which gold or silver forms part;
(*d*) precious stones, jewellery, trinkets;
(*e*) watches, clocks or time-pieces of any description;
(*f*) Government securities;
(*g*) Government stamps;

(*h*) bills of exchange, hundís, promissory notes, bank-notes, orders or other securities for payment of money;
(*i*) maps, writings, title-deeds;
(*j*) paintings, engravings, lithographs, photographs, carvings, sculptures and other works of art;
(*k*) glass, china, marble;
(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;
(*m*) shawls;
(*n*) lace;
(*o*) opium;
(*p*) ivory, ebony, sandalwood, sandalwood-oil;
(*q*) musical and scientific instruments.

THE LEGAL PRACTITIONERS' ACT.

ACT NO. XVIII OF 1879 (AS AMENDED BY ACT IX OF 1884).

(*Sections* 3 *and* 4, 12 *to* 15, *and* 32 *to* 40.)

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Judge":

"Judge" means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated:

"Subordinate Court":

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865:

"Revenue-office":

"Revenue-office" includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

"Legal practitioner":

"Legal practitioner" means an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section seven who is convicted of any criminal offence implying a defect of character which

unfits him to be a Pleader or Mukhtár, as the case may be.

Suspension and dismissal of Pleaders and Mukhtárs guilty of unprofessional conduct.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any Pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

"Provided that where the party is—

(*a*) a pardánashín woman, or

(*b*) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorised by the party to give such instructions and not receiving any remuneration in respect thereof."

The proviso was added by Act IX, 1884.

To constitute "maintenance," improper litigation must have been stirred up with a bad motive or purpose contrary to public policy and justice. "Champerty" is a species of "maintenance," and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject-matter of the litigation.—Mad. H. C. Rep. I, 153.

"Or for any other reasonable cause." A Mukhtár in the Midnapore district was committed for dacoity, but was acquitted by the Judge for want of evidence. The assessors considered the man guilty, but the Judge gave him the benefit of the doubt. The High Court were inclined to think he had instigated the dacoity, and ordered his name to be struck off the roll of Mukhtárs. The Court remarked :—"We may look, if necessary, behind a verdict of acquittal, and see if the circumstances, under which that acquittal was come to, do not, except as regards a fresh trial, practically annul any such declaration of Ghulab Khan's innocence, as a verdict of not guilty might ordinarily be supposed to give. We ought not to be bound to consider him a blameless man, merely because he has been released under very peculiar circumstances from a criminal charge."—7 B. L. R., 179.

A, a pleader, was engaged by B, who was acting on behalf of C, to defend certain persons charged with the offences of rioting and of having caused grievous hurt. Two of the accused persons were relatives

of C. A agreed with B that, if all the accused were acquitted, his fee was to be Rs. 500; if the two relatives of C were acquitted, then he was to receive Rs. 250; but in the event of none of the accused being acquitted, he was to receive only Rs. 40. Before the trial B paid A Rs. 475: this having come to the knowledge of C, he telegraphed, saying that the fee was exorbitant, and A, upon being remonstrated with, handed over Rs. 250 to a banker to be placed to his (A's) credit. A alleged that out of Rs. 225 which remained with him, he paid Rs. 140 to B as commission, and that Rs. 25 was paid to his Mohurir. *Held*, that A was guilty of fraudulent and grossly improper conduct. He was suspended from practising for the period of one year.

Per Pontifex, J.—If a Mukhtár, paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage on commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer.—11 B. L. R., 312.

It was considered by the Madras High Court that the decision in *Kennedy* v. *Brown* (13 C. B. N. S., 677) governs all agreements made by members of the English Bar in that character.—I. L. R., 3 Mad., 138.

A Barrister cannot contract with a client as to his fees, and Pleaders are prohibited by a Circular Order (No. 129, 11th August 1853) from enforcing a contract for fees.—*Ibid.*

In consonance with the principles laid down by the High Court of Calcutta in several decisions, the Lords of the Privy Council held that although the law of champerty was not applicable to the mofussil, the Courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family affairs by an agreement between him and the real heirs that if he should establish their claim, he should be entitled to a share of their estate; and that such an agreement could not be enforced, being something against good policy and justice, something tending to promote unnecessary litigation, and something that in legal sense is immoral.—2 Suth. P. C., 977.

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

Suspension pending investigation.

Any District Judge, or with his sanction any Judge subordinate to him, any Judge of a Court of Small Causes of a Presidency town, any District Magistrate or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(*c*) when made by the Magistrate of the District, be made through the Sessions Judge;

(*d*) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

The power of *interim* suspension given under s. 14, cl. 5, when read with s. 40, can only be exercised after the pleader has been heard in his defence, and pending the investigation and orders of the High Court.—I. L. R., 10 Cal., 256.

Power to call for record in case of acquittal under section 14.

15. The High Court in any case in which a Pleader or Mukhtár has been acquitted under section fourteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.